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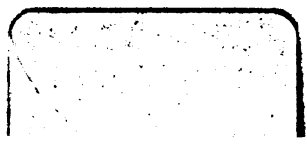
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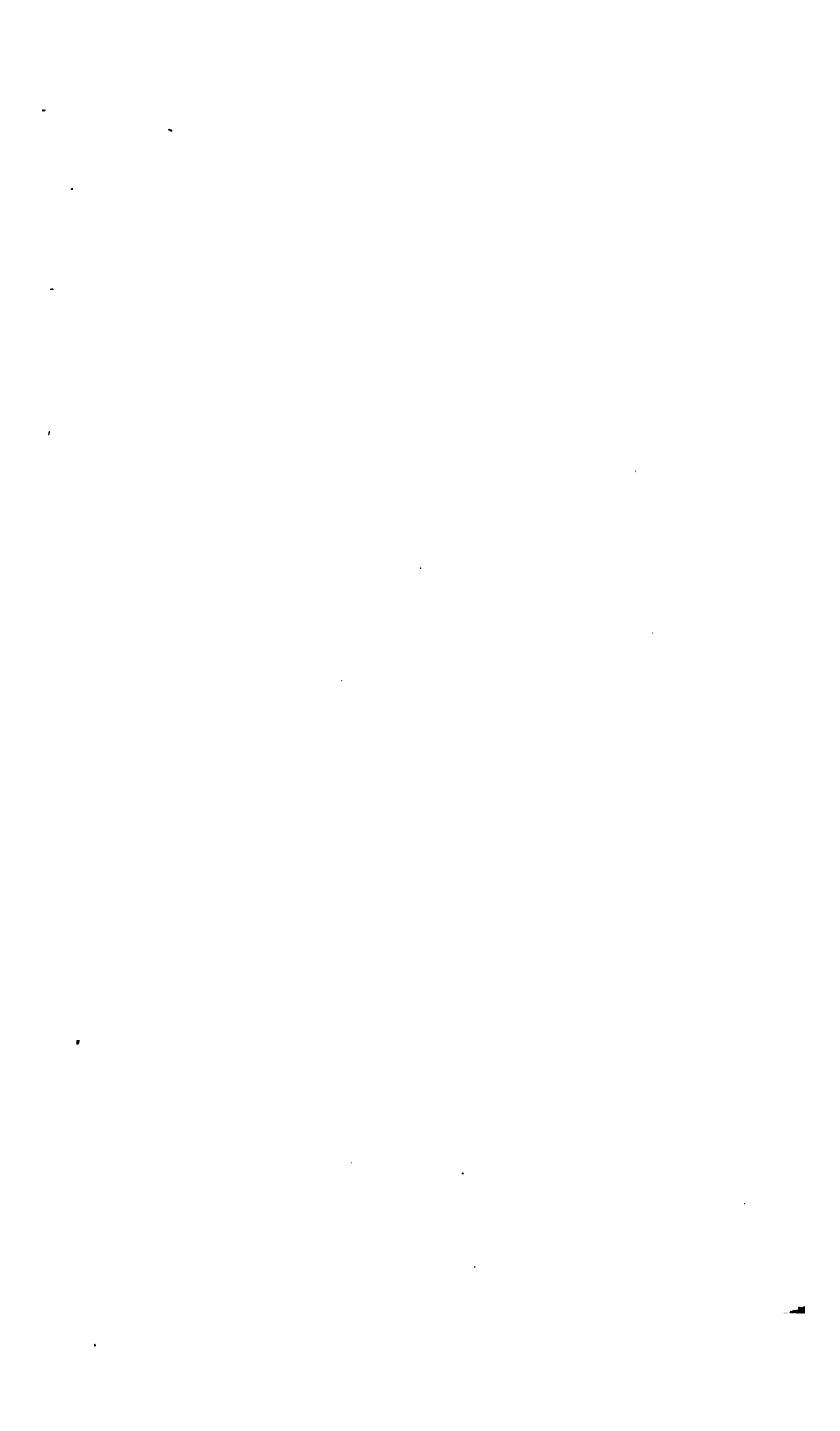
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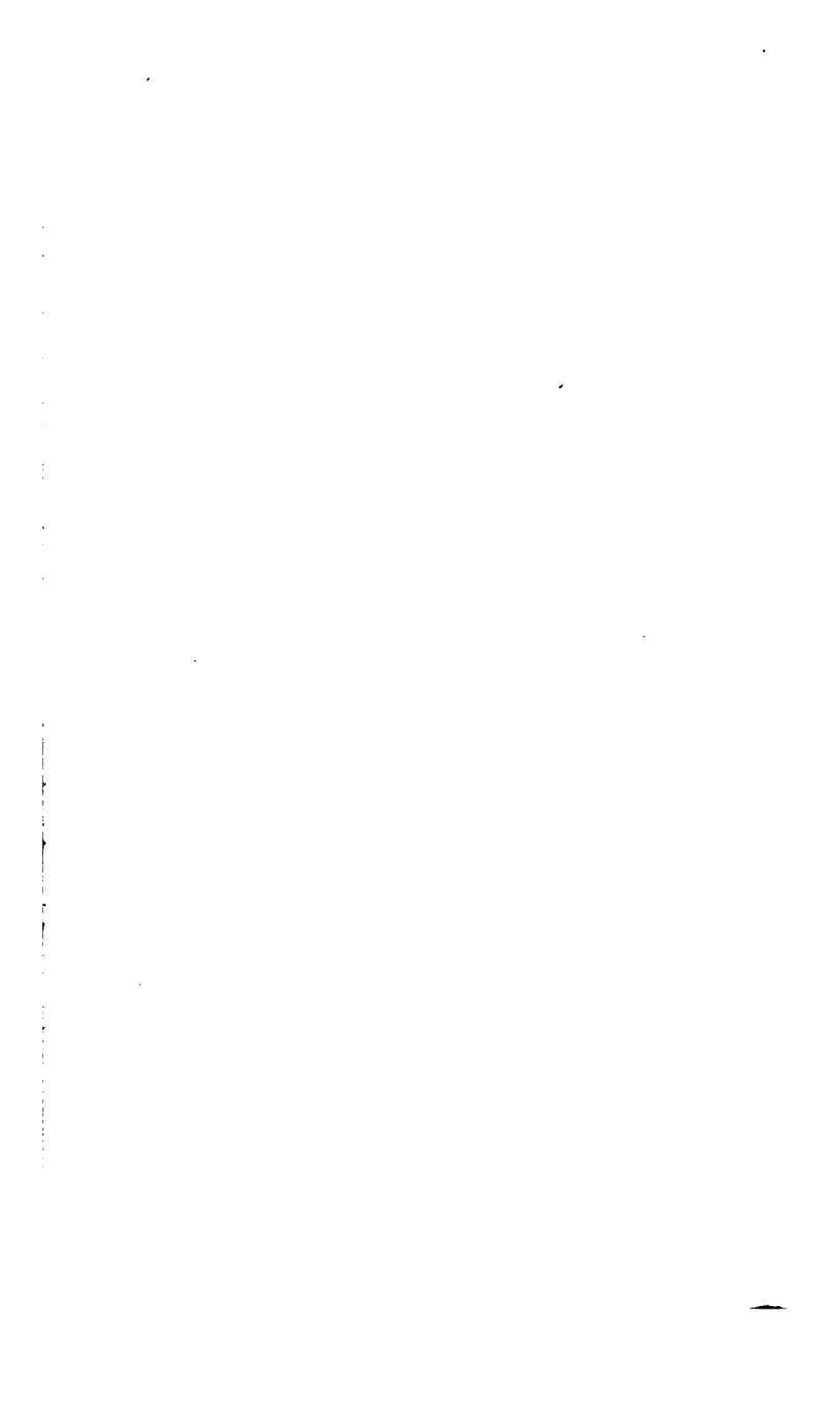


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Horatio Dowling.

AN

ACCOUNT

OF THE

PROCEEDINGS

IN THE

UNIVERSITY OF CAMBRIDGE,

AGAINST

WILLIAM FRIEND, M. A.

Fellow of Jesus College, Cambridge,

FOR PUBLISHING A PAMPHLET, INTITLED

PEACE and UNION, &c.

CONTAINING

THE PROCEEDINGS IN JESUS COLLEGE,
THE TRIAL IN THE VICE-CHANCELLER'S
COURT,
AND IN THE COURT OF DELEGATES.

Published by the Defendant.

I would as soon murder a man for his estate, as prosecute him for his religious and speculative errors.

Lord Chesterfield's Letters to the Bishop of Waterford. Letter XXXI.

CAMBRIDGE:

PRINTED BY B. FLOWER,

AND SOLD BY W. H. LUNN, AND W. PAGE, CAMBRIDGE:

ALSO BY G. G. AND J. ROBINSON, LONDON; J. MARCH,

NORWICH; J. WHITE, WISBECH; T. SHEPHERD,

BURY; AND J. HEDLEY, LYNN.

M,DCC,XCIII.

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TO THE
MEMBERS
OF THE
HOUSE OF COMMONS.

GENTLEMEN,

SEVERAL of you are in the same situation with myself, both fellows of colleges, and members of an academical senate: a much greater number enjoys the privileges of the latter character. In either capacity, the proceedings in the university of Cambridge, by which an insolent and infamous attack has been made upon my rights and property, deserve a serious investigation. But, if not a single member of the house had either received his education at, or been connected with an university, institutions of such national importance require continual inspection; and the places, in which our young men are to be trained up to the love of their country, and the knowledge of every useful science, are not to be degraded by the pitiful resentment of monks, and the squabbles of low characters intriguing for preferment.

I call on you, not only on my own account, though I think that every injured englishman has a claim on the protection of his fellow countrymen in parliament, but for the sake of my country, that, by a timely interference on your part, an abominable spirit of bigotry and fanaticism may be crushed in our seminaries of learning, and that the rewards of literature may not be made the vehicles of corruption, and the bribes of time-serving and interested priests. The university of Cambridge stands in need of a thorough reform. My own experience of its merits and defects, is considerable; and the injuries I have received in it, do not make me unmindful of the former, or willing to exaggerate the latter. The application of my first years gave me an early opportunity

portunity of examining thoroughly our system of education, and the manners of those who preside over it: but in the discharge of the duties of an important office, I was not prevented from employing many hours in the studies of sacred literature. In consequence of this application of my time, I disbelieved the athanasian creed; and, on declaring my disbelief, a learned doctour, now a right reverend prelate, who had most probably never given himself the trouble of making similar researches, deprived me of the office of tutour, and an income of above a hundred and fifty pounds a year.

To tell a man of reading and reflection, that he is not to write, is as absurd, as, in setting a sumptuous entertainment before a hungry mouth, to prohibit an enjoyment of the repast. The situation of this kingdom at the end of last year struck me, as it did many others, with apprehensions, not so much of sedition, as held out from high authority, as of the inroads of despotism, from various associations, formed under the pretext of defending liberty and property, yet giving encouragement to a species of tyranny, which marks the decline of an empire. When private confidence is destroyed, and informers rise up throughout a kingdom, and one part of a nation is set against the other, we may be sure that the time of change is near, and whatever merits the constitution has, they must be either given up, or carried on to a higher pitch of perfection. The latter was my hope; and, not being a member of any association, I resolved to address the contending parties, with a view of bringing them together, to consult for the common good. Among other political institutions, I could not avoid making some remarks on one called the church; but at the very mention of reform in that, which most of all requires it, the bigots and time-servers of Cambridge, were up in arms: they met together, formed a cabal, conspired with the judge, determined to punish, looked out for a law, summoned me for the breach of one, indicted

dicted me upon that and another, took up the attention of the university above three months on this dispute, exposed their own ignorance and insignificance, but had the satisfaction at last of hearing the judge pronounce a sentence perfectly illegal and arbitrary. That no instance of vexation might be wanting, the master of my college was at the same time employed against me, who, after caballing with a few of the fellows, had the unparalleled insolence to order me to remove from college; and, by way of enforcing his sentence, to prohibit the servants from supplying me with necessaries. Is this the proper treatment of a student? Put yourselves, gentlemen, into my situation. My education has been a very expensive one, and gave me a natural claim to the advantages, which I once enjoyed. Why is the declaration of sentiments to be made a pretext for driving me from the seats of learning, and depriving me of my property?

There is a publick officer to accuse individuals of crimes committed against the state: a court is wanting, in which an individual may make his complaints against the nation. Were I to plead in such a court, I would accuse the english nation of injustice and cruelty. Of injustice and cruelty, I repeat the words, to myself; and there are, I doubt not, many persons in the same situation. The nation, I would say, held out encouragement for me to expend my property, and to exercise my talents, in the hopes of meeting with a suitable reward. I did so: but for proclaiming, as in duty bound, what appeared to me to be the truth, I have been subjected to loss of property, and perpetual mortifications. It is unjust, I say, in the english nation, to permit a student to be deprived of his property on account of his sentiments; and it is cruel to hold out that encouragement, which may expose him to the stings either of conscience or poverty.

Let an honest jury sit on this cause, and the sophistry of priestcraft would not prevent a determination in my favour: but, instead of damages, the nation should only be called on to redress these evils, and to prevent others from falling into similar difficulties. Remove at once, we say, all your penal laws respecting religion; put it on the same footing with philosophy; and, if it is necessary that any one should subscribe a set of propositions, drawn up by quarrelsome divines, above two hundred years ago, let the subscription be confined to those who are to teach them. Is it not ridiculous, that many of you should have subscribed the thirty-nine articles, when you have never read them, and perhaps scarce know that you have set your names to the belief of them? If you were questioned in the house by those members, who have not gone through this ceremony, could you enter into the disputes on the five points; and should you not be the first to laugh in private at being supposed to believe them? What greater connection has the entrance into an academical senate with the thirty-nine articles, than into the house of commons? But perhaps it will be said: if we do not make such restrictions, persons, who are not christians, may be admitted into the highest ranks of the university. We answer: if it is requisite to have only christians, draw up such articles as may be subscribed in the present days; and you know, and all men know, that there is no one in England who subscribes the articles in the sense in which they were imposed, nor can such a sense be fixed on them by any one, in which the acquiescence of another on the principles of common sense is to be expected. But supposing non-christians to be admitted, where would be the harm? May not an infidel be a very good classical scholar, an excellent mathematician, an acute logician? May he not be an ornament to the university in a variety of arts and sciences, without ever entering into religious disputes? I have had some experience of academical men, and should be very willing

ling to exchange a few of our most orthodox men, with long faces, and empty skulls, for the learning, talents, and integrity of infidels. Let us lay aside these idle distinctions. There is nothing so well calculated for the happiness of mankind as religion ; but, when it becomes an instrument of policy, and is made a discriminating mark in society, all the vices of the priesthood necessarily fall into its train, and that, which should be only a blessing, proves, to honest minds, a source of infinite vexation.

The first thing, therefore, in the university, to which I would call your attention, is the folly of making its members subscribe a religious creed. The absurdity of requiring a subscription to Euclid, or Newton, though in them there is demonstration, would at first sight be apparent ; but, in questions admitting only probability, and which must, in various periods have been received, either on false grounds, or no grounds at all, it is vindicated by men, who pretend to be philosophers and christians. Permit the language of an eminent writer on the most celebrated schools of antiquity, to be applicable to our seats of learning : ‘ The systems, which professed to unfold the nature of god, of man, and of the universe, entertained the curiosity of the philosophick student : and, according to the temper of his mind, he might doubt with the scepticks, or decide with the stoicks, sublimely speculate with Plato, or severely argue with Aristotle.’ What ! if in one year Athens, by the banishment of Epicurus, and his antagonists, silenced all vain disputes concerning the nature of the gods, ‘ in the ensuing year they recalled the hasty decree, restored the liberty of the schools, and were convinced by the experience of ages, that the moral character of philosophers is not affected by the diversity of their theological speculations*.’

* Gibbon's Decline of the Roman empire. c. 11.

Having released our minds from a worse than egyptian bondage, go on a little farther, and remove another burden, which the folly and superstition of our ancestors imposed on posterity. The university was founded in the times of popery, when the character of the priesthood, to which the little learning in those ages was in a great measure confined, was supposed to be sacred. Hence the education of our young men is confined, not only in colleges, but in most of our schools, to the clergy. Now what connection is there between a teacher of the mathematicks, or a lecturer on Homer and Aristophanes, with the reader of certain prayers, and explainer of religious doctrines in the churches? Cannot the same discipline be kept up by well-bred men of letters, as by the starch manners of cloistered life: and are a large wig, a long band, and a black dress, better qualifications for a lecture room, or a college lodge, than the plain dress of an english gentleman? Let it not then be required of a man of letters, to go into orders for academical preferment, but make the rise of an individual depend solely on his progress in literature.

To require men to go into orders, is a relick of popery; a still worse prevails in our universities. The colleges are now the receptacles of protestant, instead of popish monks. It would be an insult on your feelings as men, and your understanding, as rational beings, to dwell a moment on the absurdity of requiring celibacy from fellows of colleges. The only argument now advanced in its favour, is the fear of too tardy a succession, which might be obviated; and, if not, the law of nature is paramount to any made by civil society.

These few things are pointed out to shew you the necessity of some reform. Make the universities in short proper to qualify men for the situations which they are hereafter to occupy in life, and remove those ridiculous statutes, which, in the present days, no one can obey.

The

The university may be made a great national benefit: the magnificence of its structures, and the extent of its revenues, occasion envy only in little minds, who do not consider, that an individual in the peerage possesses a greater income than that of all the colleges put together; and, instead of diminution, a considerable increase of wealth may be requisite to render them worthy of a rich and enlightened nation.

There is not, I am persuaded, a more sincere friend to the university than myself. I wish to see it flourish; and I lament that such men bear sway in it, as are qualified only to indulge in the repose of a prebendal stall, or an episcopal throne. By the interference of parliament, rewards would be held out to literature alone, and, when the church receives no more encouragement than any other profession, our alma mater will become eminently useful to her country, and cease to exhibit such scenes, as have lately tempted her sons to believe her in her dotage.

A glance at the academical proceedings, contained in the following pages, may suggest some other ideas worthy of a diligent examination. The writing of a book has subjected me to much inconvenience; and I have been condemned without any specifick propositions being pointed out, as contrary to any existing law. The same thing has taken place in other courts, and nothing appears so uncertain as the whole doctrine of libels laid down by parliament, or maintained by the judges. The unusual outcry raised against my publication, made me submit it to two eminent characters, the one in the civil, the other in the common law. The opinion of the former is published in this work; the latter declared that there was nothing criminal in it, but it was impossible to say, in these times, what might be the construction of a jury. Surely the law ought to be definite and clear: tell us what propositions are criminal,

and authours will then know how far it may be prudent to speak the truth. For my own part, I had not the least idea, that a work suggesting improvements in a government, without in the least approaching the constitution, could be an object of censure. I am convinced indeed, that no discouragement should be given to the publishing of speculative opinions: and should a writer attack the constitution itself, the result ought to be, that we should either improve upon his plans, or laugh at him for the badness of his reasoning.

Much clamour has been lately made on the excellence of our constitution; and few people, in talking on this subject, are willing to recollect, that the term itself is a mixed mode, and, until it is defined, disputes, carried on with acrimony on such a subject, shew only the ignorance of the contending parties. The merest child in reasoning knows this; yet the language of men, learned in the law, and eloquent in the house of commons, proves sufficiently, that, either from inattention, or worse motives, they stand in need of being sent again to the first rudiments of science. Every term used in law should be clearly defined, and every case may then be safely entrusted with a jury; but, if the basest arts are used to prejudice the minds of the judges, before a work is submitted to their decision, the situation of writers in Constantinople, or Madrid, is preferable to that in our boasted land of liberty.

In recommending these things to your notice, I am discharging, I trust, the duty of a good citizen; and sincerely wishing, that in these critical times your deliberations may be the means of promoting the common good,

I remain,

With great respect,

Gentlemen,

Your much-injured fellow-countryman,

WILLIAM FRENCH.

PROCEEDINGS IN JESUS COLLEGE

AND THE

UNIVERSITY.

THE pamphlet, entitled Peace and Union, occasioned on its first appearance no small ferment in the university. The fellows of St. John's college were particularly clamorous, and they were joined by that set of men, who, from pretensions to particular sanctity of manners and zeal for orthodoxy, have gained among us the appellation of saints. These two sets formed the majority of the faction, which now goes in the university by the name of the 27, among whom the reader will naturally conclude, that there were several, who, caring little for orthodoxy or sanctity, were zealous to recommend themselves to the ruling powers; and, not being capable of acquiring distinction by any laudable pursuits in the paths of literature, were anxious to intrude themselves by noise and intrigue on the publick notice.

These different parties were employed in disparaging the book, and spreading abroad very unfavourable reports of its authour. They did not hesitate to declare him guilty of a falsehood on a matter of fact, which was well known to thousands within an hour's ride of Cambridge: but, such is the nature of prejudice, they would neither give themselves the trouble of inquiring, nor listen to the attestations of impartial men.

At Jesus college there was a meeting of some of the fellows, who drew up the following paper:

Feb. 22, 1793.

At a meeting of the president and major part of the
resident fellows;

Resolved, that a pamphlet, entitled Peace and Union, lately published by W. Friend, M. A. fellow of this college, appears to us to have been written with the evil intent of prejudicing the clergy in the eyes of the laity, of degrading in the publick esteem the doctrines and rites of the established church, and of disturbing the harmony of society. And that, as we feel it to be our particular duty to disavow principles calculated to mislead the minds of young men entrusted to our care, a copy of the said pamphlet be sent both to the vice-chancellor of the university, and to the visitor of the college, inclosed in a letter to each, expressing our disapprobation of the opinions therein delivered, and humbly requesting them to take such measures as in their judgement may appear most proper for the effectual suppression of their dangerous tendency.

W. Mathew. J. Costobadie. T. Castley.
J. Plampin. Tho. Bayley.

Soon after there was a meeting at the vice-chancellor's lodge of the twenty-seven, all members of the senate, who entered into resolutions to prosecute the authour. In consequence of this transaction the following notes passed between Mr. Friend, Dr. Kipling, and the vice-chancellor.

To the Rev. Dr. Kipling.

Mr. Friend requests that Dr. Kipling would send him a copy of the resolutions made, and the names of the persons who signed them at a meeting held yesterday at Queen's lodge, of which he understands that Dr. Kipling was the chairman.

Tuesday morn. Mar. 5, 1793.

To

To Mr. Frend.

Dr. Kipling has not in his possession a copy of the resolutions that were made yesterday at Queen's lodge.

Tuesday, Mar. 5.

To the Rev. Dr. Kipling.

Mr. Frend requests that Dr. Kipling would inform him by what means he is to get a copy of the resolutions that were made yesterday at Queen's lodge.

Tuesday, Mar. 5.

To Mr. Frend.

Sir,

The resolutions were deposited in the hands of the vice-chancellor, and I believe that no copy was taken of them by any gentleman at the meeting.

I am, Sir, yours, &c.

T. KIPLING.

To the Rev. the Vice-chancellor.

Mr. Frend having been informed by Dr. Kipling, the chairman of a meeting held yesterday in the house of the vice-chancellor, that the resolutions of that meeting were deposited in the hands of the vice-chancellor, requests the favour of the vice-chancellor to send him a copy of these resolutions, and of the names of the persons who signed them.

Mar. 5, 1793.

To the same.

Mr. Frend, not having received any answer to his note to the vice-chancellor, is apprehensive that it may not have reached him, and must therefore beg leave to renew his request, that the vice-chancellor would favour him with a copy of the resolutions made yesterday at his

lodge, and deposited, as he was informed by a note from Dr. Kipling, in the hands of the vice-chancellor, together with a copy of the names of the persons who signed them. Mr. Frennd's interests are so materially involved in these resolutions, that he is anxious both to inspect them himself, and to submit them to the consideration of his friends. On these accounts Mr. Frennd trusts the vice-chancellor will think no apology necessary for this trouble.

Mar. 5, five o'clock, afternoon.

To Mr. Frennd. .

The Vice-chancellor informs Mr. Frennd that he does not think himself authorized to comply with his request.

Queen's Coll. Lodge, Tuesday, Mar. 5.

The affair now took a very serious turn, and some severe censures were passed on the twenty-seven in the publick papers; which put the authour under the necessity of writing the following letter to the editor of the Morning Chronicle, who very kindly inserted it in his paper.

To the Editor of the Morning Chronicle.

Sir,

It was with great concern that I read in your paper of Thursday last, an account of the proceedings now on foot in this place against myself as author of a pamphlet entitled 'Peace and Union, recommended to republicans and antirepublicans,' because it is my wish that the publick may be presented with a clear statement of this extraordinary business without an appearance of bias on either side; and the favourable terms in which my name is mentioned excite still more the malice of my enemies, and increase the calumnies to which I have for a long time been subject. It is true, that a party of masters of arts, and doctors, met at the vice-chancellor's on Monday last,

last, to deliberate on the mode of attacking me; but the vice-chancellor, as he is to be the judge, declining to be present at the debates, Dr. Kipling took the chair. A committee was appointed, I understand, consisting of Dr. Kipling, Dr. Jowett, Mr. Mainwaring, Mr. Belward, and Mr. Mansell, to draw up articles of accusation; and a general meeting is to be held to-morrow, when they are to be taken into consideration.

As the account of the proceedings on Monday reached me only by report, I wrote on Tuesday morning to Dr. Kipling for a copy of the paper which had been signed by his party, and was by him referred to the vice-chancellor; the vice-chancellor, after two applications to him by note, and several hours delay, returned for answer, that he did not think himself authorized to comply with my request.

In this state affairs rest at present. I shall not renounce any positions in my book, unless some valid arguments (of which to my knowledge not one of the twenty-seven has as yet attempted to produce the least shadow) are adduced in confutation of them. The book will probably soon be published in London, when the publick at large may have an opportunity of commenting on the danger of those truths which have excited so great a ferment in the university.

I remain, Sir, your very obedient,

W. FRIEND.

In this situation affairs remained in the university, and the authour expecting every moment to be cited into the vice-chancellor's court, did not receive his summons until the 24th of April. But not content with prosecuting him in one court, the faction thought it expedient, that he should have no rest in his own college, and the master, after two days deliberation with
several

several of the fellows, and an intermediate journey to London, to take the opinion of a civilian, appointed a meeting of the college, which he required the authour, by the following note, to attend.

The master of Jesus college informs Mr. Friend that he appoints Wednesday, April 3, at eleven o'clock in the morning, for a meeting of the master and fellows, to take into consideration a pamphlet, entitled Peace and Union recommended, &c. by W. Friend, &c. which meeting the master requires Mr. Friend, if called upon, to attend.

Jesus Coll. Camb. Mar. 27, 1793. W. PEARCE.

To Mr. Friend.

The attention of the university was now turned to this meeting, and the opinion, which the master had brought down with him from town, was thought by the faction a sufficient ground for expulsion from college. This the master would not permit the authour to have a sight of, though it was shewn by him to his friends out of college, who lost no time in circulating the report through the university, that every thing succeeded to their wishes, and that there could be no doubt of the college co-operating with the twenty-seven in the execution of their designs. The friends of the authour were alarmed; with the energy of that zeal, which throughout the whole of these proceedings have uniformly marked their kindness towards him, they came round him, and entreated him to be no longer passive. They requested him to send the case to a civilian: he considered it as superfluous, conceiving that it required none of the acuteness of a lawyer to understand a plain college statute: but being unwilling to oppose the better judgement of persons, for whom he has the greatest regard, he sent his case to town to be laid before a civilian, and received the following opinion from Dr. Harris.

CASE

C A S E.

The following is a copy of one of the statutes of Jesus college, Cambridge.

De pœna enormiter-delinquentium.

Item statuimus ordinamus et volumus quod si quis feriorum aut commensalium sive studentium dicti nostri collegii incorrigibilis existat vel de perjurio (quod absit) aut sacrilegio furto rapina vel homicidio adulterio vel incestu aut alio lapsu carnis enormi aut iniqua violenta et atroci percussione studentis focii vel quod deterius est magistri vel in alio quocunque crimine de majoribus et gravioribus quæ infamiam irrogant reus inventus fuerit per magistrum vel præidentem et majorem partem fociorum ab ipso collegio nostro removeatur et penitus expellatur.

Mr. Friend, one of the fellows of Jesus college, being the supposed authour of a tract, entitled 'Peace and Union, &c.' a copy of which is left herewith for your perusal, and the college intending to take it into consideration, how far they shall be justified in proceeding against him on the above recited statute, on Wednesday next, your answer is requested, without loss of time, to the following question :

"Is the authour of the book, entitled Peace and Union, &c. liable, on account of any thing written in that book, to the penalty contained in the above statute, and under what part of the statute can the authour be proceeded against?"

The answer of Dr. HARRIS.

The college statute is penal in its nature, and ought not to be construed more extensively by the members of a society, than it would by an established court of public
lick

lick justice; and penal statutes are always construed strictly in public courts.

The recited statute enables the master or president and the majority of the fellows, which I apprehend to be a majority of the whole number, and understand to be 16, to punish any member of the college, even by expulsion, who is found guilty of perjury, sacrilege, rapine, theft, homicide, adultery, incest, or of any gross misbehaviour or violence toward the master or any of the fellows, and also of any other crimes, which may stamp infamy on the offender.

It is, I presume, clear, that the writer of the pamphlet cannot be accused of the commission of any of the crimes, which are expressly specified in the statute; it can therefore only be asked, whether Mr. Friend, admitting himself to be the author of the pamphlet, can, as such, be said, in consequence of any passage or passages contained in it, to have maintained, adopted, or favoured any doctrine or opinion, which can be justly deemed to be of such nature as to brand him with infamy, on supposition that this statute is not limited to overt acts, and can be extended to tenets.

To this I answer,

That, as the crimes expressly mentioned in the statute, are all crimes of commission, it is to be inferred that the crimes, which are intended to be included under the words, 'quocunque alio crimine,' are crimes of commission also, and of the same nature with those which are expressed, and imply not the crimes of entertaining and propagating opinions, be they what they may: I have, however, no difficulty in further saying, that on a very attentive perusal of the pamphlet, I have not been able to find any doctrine or opinion proposed, maintained or
favoured

favoured in it, which in my apprehension can, in the judgement of any loyal, moral and christian man, be said to fix a stain on the maintainer of such doctrine or opinion, and much less such a stain as could render him infamous in any legal sense, or in the judgement 'boni et æqui viri.'

After what I have written, it may not be absolutely necessary for me to add more, but it may yet be in point of form expedient for me to say, though it may favour of repetition, that on the fullest consideration of the case, according to the information before me derived from the college statute and the pamphlet, I am strongly led to think, that Mr. Frend can have no reason to be apprehensive of any sort of censure from a majority of a number of literary, well-informed and candid men, such as his college is reputed to be composed of, if they confine themselves in the present instance to the powers given them by the college statute, and to the contents and the general tenor of the pamphlet.

GEORGE HARRIS.

Doctors Commons, 31st March, 1793.

The case and answer the authour put into the hands of the master the day before the meeting, and desired him to lay them before the fellows. This was done in the evening, and on the next day the authour wrote down every thing that passed in the meeting, as far as he was personally concerned, in the following words:

A little before twelve o'clock on April 3, 1793, I was called into the parlour by the porter; and the master, in the presence of ten fellows, shewing me a pamphlet, asked me, whether I avowed myself the authour of it. I told him that, by advice of a civilian, I requested the accusation, if I was accused of any thing, in writing.

He told me, that there was no accusation, and should only ask me this question. I replied, that by advice of a civilian I must beg leave to wave any answer to this question. Do you disavow it, said the master. I replied; On the same principle I wave any answer to this question. I was then desired to withdraw.

Between seven and eight in the evening the master again sent for me, and told me in the presence of the fellows, that they had enquired into the proofs of my being the publisher of the pamphlet, and that they were thought satisfactory.

He also read to me the following resolutions:

1st. That several passages in the said pamphlet have a tendency to prejudice the clergy in the eyes of the laity.

2dly. That several passages in the said pamphlet have a tendency to degrade, in the publick esteem, the doctrines and rites of the church of England.

3dly. That there is a tendency in the said pamphlet to disturb the harmony of society.

4thly. That the said pamphlet tends more particularly to hurt the credit and interests of this college.

5thly. That in publishing the said pamphlet, Mr. Friend is guilty of an offence contrary to the laws of the college.

These resolutions were made, the master said, by the master and the major part of the fellows.

On being asked, what I had to say in my defence, I requested, that a written copy of the accusation might be

be given to me. Upon which the master desired me to withdraw, that the matter might be put to the vote.

About half an hour after, I was called in again, when the master read to me the following words:

The question being put, whether Mr. Frend should have any charge delivered to him in writing, and it being urged, that Mr. Frend had seven days notice by a summons from the master, of a meeting, for the consideration of his pamphlet, and that the charge was sufficiently implied in the resolutions, that had been read to him, it was carried in the negative.

Being asked then, what I had to say in my defence, I replied, that, without an accusation, it was impossible for me to defend myself, but that I should be exceedingly sorry, to have been guilty either intentionally or unintentionally of several things, contained in their resolutions. I then retired.

About a quarter past nine I was called in again, when the master read to me the following words:

The question being asked, whether Mr. Frend should be again called in, and informed, that the meeting still persist in not delivering a written charge, and that if he will not proceed on his defence, the meeting will proceed without it.

Agreed to,

I then said, that I presumed, I must consider the resolutions as an accusation, and therefore requested, that the passages in the pamphlet might be referred to, with the statutes which I had offended against, and that I would then proceed on my defence. I then retired, and

heard nothing more from the meeting, which broke up about eleven, till the next morning, when I was summoned into the parlour between nine and ten.

The master was going to read something to me, but I requested to see first the proceedings of yesterday. I then retired, and on my return the master informed me, that my request was not granted. I urged, that I had a material objection to propose, but the master refused to hear any thing, saying, that, if I had any thing to say in my defence, I ought to have said it yesterday. I replied, that I was ready to proceed in my defence yesterday, but was desired to retire, when I had requested, that the passages of the pamphlet might be referred to, with the statutes which I had offended against, but was never called in to make my defence. He silenced me, and read the following words from a written paper in his hands:

Is it the opinion of this meeting, that Mr. Friend be removed from the college, that is from the precincts of the college, and from residence in it, till he shall produce such proofs of good behaviour, as shall be satisfactory to the master and major part of the fellows?

In the affirmative	{	The master.
		Mr. Mathew.
		Mr. Plampin.
		Mr. Costobadie.
		Mr. Bayley.
		Mr. Castley.
	}	Mr. Stockdale.

In the negative	{	Mr. Newton.
		Mr. Warren.
		Mr. Whitehead,
		Mr. Otter.

And

And agreed by those, who answered in the affirmative, that he may be allowed a month from this time, to settle his affairs in college, the other four not dissenting.

I then withdrew.

It was not likely such arbitrary measures should be complied with, and though the bishop of Ely is visiter of the college, it was thought necessary to comply with the common forms on such occasions, and to appeal to him from the injustice of the master and the six fellows. The appeal was accompanied with the following letter.

My Lord,

The unstatutable proceedings of the master and certain fellows of the college, have put me under the necessity of troubling your lordship with the appeal which accompanies this letter; and I flatter myself that your lordship will see the propriety of my request, that your lordship would suspend the execution of the sentence, against which I appeal, until the matter, now at issue, has received your lordship's determination.

I remain, with great respect, my lord,
your lordship's very obedient

Jes. Coll. Camb. and humble servant,

April 17, 1793.

W. FRIEND.

THE APPEAL.

To the hon^{ble}. and right rev^d. JAMES, lord bishop of Ely, visiter of Jesus college; the humble appeal of William Friend, M. A. and fellow of the said college,

Sheweth,

That at a meeting of the master and ten fellows of the said college, held on the third of April, the master and a majority of the said fellows supposing the appellant

to

to be the publisher of a pamphlet, entitled **Peace and Union**, concurred in the following resolutions:

1. That several passages in the said pamphlet have a tendency to prejudice the clergy in the eyes of the laity.

2. That several passages in the said pamphlet have a tendency to degrade, in the publick esteem, the doctrines and rites of the church of England.

3. That there is a tendency in the said pamphlet to disturb the harmony of society.

4. That the said pamphlet tends more particularly to hurt the credit and interests of this college.

5. That in publishing the said pamphlet, Mr. Frend is guilty of an offence contrary to the laws of the college.

And, in consequence of these resolutions, without having pointed out the exceptionable passages in the said pamphlet, or the statutes against which the appellant is supposed to have offended, or having even permitted him to speak in his defence, the master and six of the fellows agreed, on the subsequent day, to remove the appellant from residence in the college, as appears from the following words, which the master read to the appellant in the meeting:

Is it the opinion of this meeting, that Mr. Frend be removed from the college, that is from the precincts of the college, and from residence in it, till he shall produce such proofs of good behaviour as shall be satisfactory to the master and major part of the fellows?

The

In the affirmative {
 The master.
 Mr. Mathew.
 Mr. Plampin.
 Mr. Costobadie.
 Mr. Bayley.
 Mr. Castley.
 Mr. Stockdale.

In the negative {
 Mr. Newton.
 Mr. Warren.
 Mr. Whitehead.
 Mr. Otter.

And agreed by those who answered in the affirmative, that he may be allowed a month, from this time, to settle his affairs in college, the other four not dissenting.

To prevent the execution of this sentence, passed in so irregular and unstatutable a manner, the appellant humbly requests the interposition of the visiter on the following grounds:

1. Because no exceptionable passages in the said pamphlet were produced.

2. Because no laws of the college, against which the appellant has offended, were pointed out.

3. Because the appellant had no opportunity of vindicating himself from the supposed charges.

4. Because it does not appear from the statutes of the college, that the master and six of the fellows, or any other number less than the majority of all the fellows, are competent to inflict any punishment on a fellow, much less one not expressly warranted by the statutes.

5. Be-

5. Because the sentence of removal from the college is not only not warranted by the statutes, but is clearly inconsistent with that which requires the constant residence of the master and fellows.

W. FRENCH.

The master and five fellows answered the above appeal, and delivered a copy of it to Mr. French.

To the honorable and right reverend JAMES, lord bishop of Ely, visitor of Jesus college, Cambridge.

My lord,

We have received from Mr. French a copy of an appeal, which he has made to your lordship, from a sentence of a motion pronounced against him by the master and major part of the fellows, for publishing a pamphlet entitled 'Peace and Union, &c.' The spirit and contents of the pamphlet considered, we had reason to think that in the sentence pronounced, the lenity of the college was as conspicuous as its justice. But since Mr. French has not thought proper to acquiesce in it, we beg leave, in few words, to vindicate our proceedings from the objections which he has made to them.

As Mr. French, in the introductory part of his appeal, represents the master and fellows, as only supposing him to be the publisher of the pamphlet in question, we shall lay before your lordship, in the first place, the evidence which was adduced to us in proof of that fact.

Mr. Bowtell, the bookbinder, and his boy, were the first called in. The boy said, that a parcel of books came to Mr. Bowtell by the St. Ives carrier, that Mr. French came and unbound the parcel, dividing it into two bundles, which, by Mr. French's orders, he carried to the two bookfellers, Merrill and Lunn, for sale. Mr.

Bowtell

Bowtell confirmed that Mr. Frend was at his house on this business, and that it was on the 12th or 13th of February. The boy added, that he did not carry any books to Merrill's or Lunn's for a considerable time before or after. Lunn's servant was then called in, he confirmed the bringing of the bundle by Bowtell's boy to Lunn's shop, and said that it consisted of Mr. Frend's book called 'Peace and Union,' &c. He farther said, that that morning, April 3d, he brought twenty copies of this pamphlet from Mr. Frend's rooms, at Mr. Frend's request, for sale, one of which pamphlets he produced.

This is a detail of the evidence given to us in support of the fact of publication, by which we were fully satisfied that Mr. Frend was to be considered as the publisher of the pamphlet. The fact of publication being thus established, the first ground of objection taken to the validity of our proceeding thereon is, that no exceptionable passages of the pamphlet were produced.

It is true, my lord, that we declined pointing out particular passages, because our disapprobation was founded not merely on detached passages, many of which are, in our apprehension, of a tendency highly criminal and dangerous, but also on the general tenor and tendency of the whole composition. If your lordship should deem it necessary, that passages should be distinctly pointed out, we shall have neither difficulty nor repugnance in obeying any order which your lordship may be pleased to make upon us to that effect. But we humbly conceive that the whole pamphlet (to which we refer, and which we have annexed to this answer) being submitted to your lordship's view, will remove the necessity of any such selection at present, and fully justify the propriety of having declined to make any such selection at the time of the inquiry.

The next ground is, that no laws of the college, against which Mr. Friend had offended, were pointed out.

In cases of discipline, we apprehend that it is not necessary to point out particular statutes; because if the matter is referred to the visitor, the college avails itself not of one, but of the whole body of the statutes, and also of the general design and intention with which societies of that kind are instituted. The college, we submit, hath, quatenus a college, an inherent right, independently of any express or particular statute, to take cognizance of and punish offences, contra bonos mores, committed by its members; and among those offences we believe, no person will have any difficulty in ranking the publication of this pamphlet.

The 3d ground is, that Mr. Friend had no opportunity of vindicating himself from the supposed charges.

It will appear to your lordship from the course of the proceedings, that three distinct opportunities of defence were given to Mr. Friend, which he declined to accept, but upon conditions demanded by himself, to which the college acceded, so far as they conceived those conditions to be founded in justice. The first time that he was called in, instead of entering upon his defence, he demanded a written charge. The second time that he was called in, he would not enter upon his defence, but insisted upon his former demand, though he was told that the charge, which he demanded, was contained in the resolutions which had been read to him, of which he had taken a copy. It was then resolved, that if he would not enter upon his defence without some other charge than that contained in the resolutions, the meeting would proceed without his defence. On being called in a third time, this was declared to him: but instead of attending to it, he made other new demands, which
were,

were, that as by the resolutions read to him, he was accused of certain offences, the passages of the book, in which he had offended, and the statutes against which he had offended, might be pointed out to him; which were refused on the grounds above stated to your lordship in our answer to the first and second articles of objection.

As to the 4th objection, that it doth not appear from the statutes of the college, that the master and six of the fellows, or any other number less than the majority of all the fellows, are competent to inflict any punishment on a fellow, much less one not expressly warranted by the statutes: We answer, that the present sentence was virtually passed by a majority of the fellows; for a majority of the fellows being present at the meeting, and the major part of that meeting having concurred in the sentence, such sentence is valid, and to be considered as passed by the whole meeting, tho' some of the members present should have refused their assent to it, and even expressed their dissent from it. If there should be any doubt of this, upon the face of the statutes, we beg leave to refer your lordship to bishop White's interpretation of them, which is of equal validity.

The last ground of objection is, that the sentence of removal from the college is not only not warranted by the statutes, but is clearly inconsistent with that statute, which requires constant residence of the master and fellows.

In answer to this we must observe, that the statutes confer a power of total expulsion itself, for such acts of misconduct, as are more particularly criminal and offensive. But altho' it were true, that the sentence was not expressly marked out by the statutes, yet we contend, that it was perfectly competent to the college to pronounce

nounce it under that general and necessary authority which it possesses in all cases of discipline, whether specifically described in the statutes or not. Temporary a-motion is a punishment well known, and is frequent in the practices of all colleges for offences either moral or academical. It is analogous to the canonical punishment of suspension ab officio, which is chargeable with inducing the same inconsistency as is complained of in the present case, since the minister is thereby restrained from discharging those duties, which he has solemnly bound himself to perform. It is analogous to most punishments in civil society, which induce, for the time they last, a disability of doing several acts which the guilty person would otherwise be under an obligation of performing. A similar inconsistency to that which is now complained of, occurs between two of our own statutes: the statute de refectionibus, cap. 19, says that the fellows shall not be absent from dinner or supper in the hall, nisi ex causa rationabili, per magistrum et seneschallum approbanda. And yet the statute de malis moribus, &c. cap. 8. requires that a fellow, for certain offences shall be put out of commons. This objection we cannot help observing is somewhat extraordinary, coming from a man in Mr. Frenn's situation, since it goes to the lenity of the sentence; for the statutes would have warranted the college in punishing him, by total expulsion, for an offence of such magnitude as that of which he has been guilty,

We have the honour to be, my lord,
Your lordship's most dutiful and most obedient servants,

W. Pearce,

W. Mathew.

J. Plampin.

J. Costobadie.

Tho. Bayley.

Thomas Castley.

The prosecution in the university now took up the attention of the appellants, so that having only cursorily looked over the answer, he wrote to the bishop to excuse himself from replying to it immediately.

My lord,

Mr. Mathew put into my hand yesterday, by your lordship's order, the answer of the master and certain fellows of the college to my appeal. The same motives which led them to condemn me, unheard, in this college, instigated them to make part of a cabal to prosecute me in the vice-chancellor's court, and I have been under the necessity of appearing in that court four days; where, after a strict examination of fifteen hours, the facts have not been proved which they have misrepresented in their answer, and on which, after a few minutes conversation, they took on themselves to pass a sentence wholly irrelevant and unjustifiable in law and equity.

My accusers are expected to finish their charges on Friday next, and I shall be called upon for my defence in the course of next week. Your lordship is sensible that a person who has for the last three months laboured under the pressure of every thing which malice and calumny can suggest, and whose attention has been wearied by the fatigue of observing the wretched tricks which my accusers have used in attacking me, is incapable of sitting down immediately to reply to the master's answer, in a manner worthy of your lordship's notice, and I shall therefore presume so far on your lordship's patience, as to delay the reply till I have completed my defence before the university. As the annals of the university do not present an instance of a persecution attended with so many circumstances of malice and ingratitude, and so contrary not only to the principles
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of the christian religion, but to every maxim of law and justice, I trust that your lordship will, with your usual kindness, accede to the request of a much injured man, and one, who is with great respect,

Jes. Coll. Camb.
May 15, 1793.

My lord,
Your lordship's very obedient
and humble servant.

W. FRIEND.

The bishop did not condescend to answer this letter, but by his secretary, allowed three weeks, to commence on May 22d, for the drawing up of the reply. Before the expiration of that term another request was made in the following letter.

My Lord,

I am sorry to be under the necessity of making another application to your lordship, to request farther indulgence with respect to the time of making my reply to the paper delivered to me by Mr. Mathew. A plain statement of facts will, I flatter myself, convince your lordship that my request is not unreasonable.

The vice-chancellor's court was broken up last Thursday, after having sat eight days, during which, my attention was necessarily taken up with the proceedings; and the fatigue I underwent might have borne down men of much stronger constitutions. On Friday I appealed to the university, and on Saturday the proctor, in the name of the university, inhibited the vice-chancellor from putting his sentence, which is founded neither in law nor evidence, into execution. I must now prepare myself to appear before the delegates, and not being by any means recovered from the fatigue of
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the last business, your lordship will, I hope, have the goodness to allow me a longer time to prepare the reply to be laid before your lordship.

It is an unusual thing that an englishman should be thus employed in two different courts, on the same subject, and I was once in hopes that my persecuters would have permitted a decision to take place in one court before they proceeded to attack me in another. But as they were resolved to harras me to the utmost of their power, I have only to commit my myself to your lordship's protection, and to request that, as to this moment I have not been free from vexation, and am now scarce able to take pen in hand, I may be indulged with longer time, or, if it should be agreeable to your lordship, I could wish to be permitted to delay my reply till the merits of the cause, now pending in the univerfity, have been fully and finally discussed by its delegates. I have the honour to be, with great respect,

My Lord,

Your lordship's very obedient

and humble servant,

Jesus College, Camb. June 3, 1793.

W. FRIEND.

The bishop, in return, answered by his secretary, that he did not think it consistent with a proper attention to the college, and the nature of the business referred to him, to comply with the request. His lordship was, therefore, put to the trouble of receiving another letter.

My Lord,

As the circumstances already mentioned to your lordship have prevented me from giving more than a cursory glance

glance at the answer to my appeal, I am by no means certain what time or trouble will be requisite for the reply. But if I am not in the mean while called upon by the univcrsity, I shall do my utmost endeavours that it may be with your lordship by the end of next week. I have the honour to be, with great respect,

My Lord,

Your lordship's very obedient humble servant,
June 5th, 1793. W. FRIEND.

After this the appellant went into the country for a few days to refresh himself a little from the fatigues of academical strife, and on his return to college took up the answer of the master and his fellows, and, surprized to find it so weak and trifling, drew up, in a couple of days, his reply, which he sent, accompanied with the following letter, to the bishop.

My Lord,

Inclosed is my reply to the answer of the master and five fellows of this college. Had I, on the receipt of it, read it twice over, your lordship would not have been troubled with any requests from me for time to consider it. I remain with great respect,

My Lord,

Your lordship's very obedient humble servant,
June 14, 1793. W. FRIEND.

The absence, it is presumed, of his secretary, put his lordship to the trouble of writing an answer to the above in the following words.

The bishop of Ely received, by yesterday's post, Mr. Friend's reply to the answer of the master and fellows of his
his

his college to his appeal against their sentence. His lordship desires Mr. Frennd will deliver a copy of the reply to the master and fellows for their consideration.

June 20th, 1793.

In obedience to this order, as the master was absent, a copy of the reply was given to the president of the college.

R E P L Y.

My Lord,

The answer to my appeal is sign'd, I perceive, by the master and five only of the fellows, who agreed to remove me from the college: from whence I conclude that the sixth fellow being fully sensible of his error, in acting in so unwarrantable a manner against one of his society, refused to be any farther connected with those by whom he had been misled. I am not surpris'd that the five fellows should praise themselves for their lenity; since they had sent to your lordship an accusation very different from the resolutions entered into at the meeting of the third of April, and had besides been most of them part of a cabal, to deprive me of my degrees, and to banish me from the university. It is no wonder that they should talk of lenity, who regard as of little moment the inconvenience which a man of letters must feel, by being deprived of the calm repose requisite for study, and of access to the rich repositories of learning in this place: but their language in my opinion is insolence in the extreme, and adds insult to injustice.

I have said that the master and fellows suppos'd me to be the publisher of a certain pamphlet, and they have now laid before your lordship the evidence by which they were guided. It is the boast of englishmen, that the accused person should be confronted with the wit-

nesses, but, as in this instance a different conduct was pursued, it is no wonder that the pretended judges should not only fall into error, but should present with the utmost confidence such error to your lordship.

I do declare, and am ready to attest upon oath, that in the evidence laid before your lordship, there is an absolute falsehood.

The master and the five fellows confess, that no exceptionable passages were pointed out, and, in excuse, refer to the general tenour and tendency of the whole composition. What may be their ideas of the tendency of any work, it is not necessary for me to enquire. I do not conceive them to be competent judges of my writings, nor ever intend to govern myself by their notions of composition. In the most wretched inquisition that the world has ever seen, such a pretext for punishing a man has never been held forth. Some specifick charges have been brought against the accused person, and whether the crimes were real or fictitious, the disciples of St. Dominick carried on the appearance of justice. Even the persecuters of Galileo did not think the tendency of his philosophy a sufficient cause for confining him in prison. They brought forward the charges on which he was condemned, namely, for contradicting the scriptures and violating the laws of the holy see. To remove a man from college on the supposed evil tendency of his publications, is to open a door for the worst of persecutions. The first printed bibles in England were burnt, because of their supposed dangerous tendency, and if this pretext were allowed, students must hereafter shut up their books, lest, if, by a regular attention to college duties, they should offend some of the body who might be notorious for a disregard of all order and decorum, the publishing of a book should render them obnoxious to every species of vindictive malice and resentment.

Under

Under this head, I beg leave to offer to your lordship's consideration the following historical fact, which shews, in the strongest manner, the sense of the whole bench of bishops, on a similar occasion. In 1701, the lower house of convocation took into consideration bishop Burnet's Exposition of the thirty-nine articles of the church of England; and coming to several resolutions upon it, laid them before the upper house, which proceeded, among others, to the following conclusion: 'That the lower house of convocation's censuring the book of the bishop of Sarum, in general terms, without mentioning the particular passages on which the censure is grounded, is defamatory and scandalous.*'

The reason for not pointing out the particular statutes against which I am supposed to have offended, is ridiculous and puerile in the extreme. The statutes are given us as a rule of conduct, and to prevent arbitrary proceedings: I have sworn to obey these statutes, and to submit to a punishment according to the statutes, but not to any other. The college has certainly a right to punish a member for an offence 'contra bonos mores,' but the offence is punishable only according to the statutes. Any punishment, not authorized by the statutes, a fellow of this college is not bound to submit to; and if the master should pretend to enforce it, he does it under the peril of perjury; for he has taken an oath to govern according to the statutes. This subject has been well stated in the protest laid before your lordship by three of the fellows present at the meeting on the third of April. 'We conceive, that the master and fellows have not a power of punishing any fellow of the college, till it is clearly proved that he has offended against some one of the college statutes; and that then they are empowered to inflict only such punishment as the statute requires.'

* See Historical essay upon the government of the church of England, by George Reynolds, LL. D. archdeacon of Lincoln, p. 194.

I have said, that I had no opportunity of vindicating myself from the supposed charges; and the master and the five fellows refer your lordship to some course of proceedings, which not having seen I might invalidate, by repeating only my former assertion. But it is very extraordinary that the master and the five fellows should pretend to say, that I had three opportunities offered of making my defence, when three of the other fellows, who were present with them during the whole of the time, declare, as one reason for dissenting from the resolution of removing me from the college, that I had no opportunity given of vindicating myself. Their words are, 'It appears to us to be repugnant to the principles of justice, and contrary to the rules observed in every court, to pass sentence on any person before he has had an opportunity of answering to the particular charges brought against him, which, in the present instance, was not allowed to Mr. Friend.' In addition to this evidence, given by three very respectable members of our college, one of whom is a tutor, and exemplary in the discharge of every part of that office, I do declare, and am willing to attest upon oath, that the account delivered to your lordship is founded on a gross misrepresentation:

The master and the five fellows assert, that their sentence, for such they call their resolution, was virtually passed, by a majority of the fellows; and, as a proof, allege, that a majority of the fellows being present at the meeting, and the major part of that meeting having concurred in the sentence, such sentence is valid, and to be considered as passed by the whole meeting, though some of the fellows expressed their dissent to it. The consequence of this reasoning is, That if a master of the college, regardless of his duty and his oath, should make a party amongst the fellows to injure another, should closet five of the fellows, and, by promises, solicitations, or threats, bring them over to his purpose, he may drive
any

any person from the college, of whom, through prejudice, he has conceived a bad opinion, or from whose fall he expects to derive an advantage. But the authour of the statutes was not so inattentive to the liberty and independance of the fellows; he was aware of the abuses which in general prevail in bodies of this sort, and would not permit a person to be exposed to the continual injuries which he might receive from the intrigues of a master, and five fellows. The smaller crimes have punishments assigned to them, to be inflicted by the master or president, and dean: the greater crimes, by the master, and majority of the fellows. Bishop White's interpretation cannot apply to this case; for it was made for the relief of the fellows in certain cases, in which, from the inconvenience or impossibility of assembling all the fellows, the college might be liable to sustain some detriment; but in his interpretation there is no reference to any statute on punishment, and it is confined solely to three statutes which limit certain elections with respect to time. In the present instance, there can be no reason for not expecting the concurrence of a majority of the fellows, if the sentence were justifiable; since the meeting was not confined to any particular time, and the master was vested with sufficient authority to bring all the fellows together. As there was more than a majority of the fellows present, and only six concurred in the resolution of removal, the proper mode of arguing is, that not only those four who dissented from the resolution, but all the rest who did not appear disapproved entirely of the master's conduct, in pretending to call the fellows together on a subject, in which it is evident they thought themselves not at all concerned. For I cannot allow the master and fellows of this college any right to decide on the merits of a work written by one of their body. The statutes give them no such power, and if a fellow of the college should, by printing or publishing, act contrary to the laws of the realm, he is in common with other englishmen,

glishmen, liable to be brought before the tribunal of justice.

Instead of answering my last objection, and pointing out the statute which warrants their resolution of removal, the master and five fellows are content with saying, that the college could pass such a sentence under that general and necessary authority which it possesses in all cases of discipline, whether specifically described in the statutes or not. But, unfortunately for them, I have taken an oath to obey, and will obey only in those cases prescribed by the statutes, and the same oath which obliges me to obey only in certain cases, is a sufficient proof that the college can demand obedience only in those cases.

The punishment of a fellow, by a temporary removal from his college, is not known in the university, except in those colleges, in which it is enjoined by their statutes, and I have good reason for saying, that the assertion of the master and five fellows, concerning the frequent practice of such a motion in the university at large is without foundation. But were this true in other colleges, we are to be governed by our own laws, not by the laws or practice of any other community. Where the punishment of removal is statutable, the inflicting of it supercedes the duties required by the other statutes. On this principle the suspension of a clergyman *ab officio*, is perfectly consistent with his general obligation to discharge the duties of his office: such obligation being only conditional, and dependant on his own conduct, and the judgment of his superiour. But would your lordship think yourself justifiable in assuming a discretionary power of banishing a clergyman from his living, who, by his oath, is obliged to residence, such punishment not being enjoined by any law of the church? There is no inconsistency between the two statutes pointed out by the master, and the five fellows. To make such inconsistency, they

they must suppose, that the fellow, who, in virtue of the latter, shall be put out of commons, is not obliged by the former to dine in the hall at his own expence; or if any such inconsistency should be allowed, it is certainly not a similar one, as it arises from an express injunction of the law-maker. And, if the founder of the college had thought fit, among other punishments, to appoint that of temporary removal, and to add, that it might be inflicted by the master, and six of the fellows, there would be no doubt of the obligation on every fellow to comply with it; but as the master, and the five fellows, have not brought the least shadow of a proof that this is the case, my objection remains in full force.

On the whole, I cannot help observing to your lordship, that the master, and the five fellows, have failed in their answer to every one of my objections. Being sensible of the weakness of their cause, and the badness of their arguments, they pretend to talk of the lenity of their sentence, and of the situation in which they suppose me to be placed. The offence, of which they conceive me to be guilty, is an ideal one; the statutes would not have warranted them in punishing me by total expulsion; and if they had, the exchange of expulsion for a temporary removal, must, on my part, have been optional. So far from giving the master, and five fellows, any credit for their lenity, I conceive them to have done the utmost in their power, for which they imagined that they had the least semblance of a pretext, and the injustice of their conduct is apparent in the total irrelevancy of their sentence. For, what has the publishing of a book, containing speculative opinions, to do with the behaviour of an individual? What misbehaviour could they ever charge me with? What certificate of good behaviour do they require? What proofs will satisfy Mr. Plampin, who is a tutor in the college, and notorious for neglect in the most material part of his office, that of giving lectures?

If proofs were requisite, I could bring them signed by the most respectable members of this university, and the first literary characters in the kingdom; and I should have the utmost contempt for myself, if my character could be in the least hurt by any imputation which the master, and the five fellows, have endeavoured to fix upon it. Instead, therefore, of requiring a certificate of my good behaviour elsewhere, let them first produce some proofs of my misbehaviour during my residence among them; and if they could do that in a satisfactory manner to your lordship, the consequences are well known. As to this worse than inquisitorial manner of proceeding, by examining witnesses without confronting them with the accused, by refusing to hear a man in his own defence, by condemning him without pointing out the statute against which he has offended, by passing a sentence which is totally illegal, and has no connection with the supposed crimes, I am persuaded it must be as disgusting to your lordship, and every other liberal mind, as it is to, my lord,

Your lordship's very obedient servant,

W. FRENCH.

On the 16th of July, the master of the college called a meeting of the fellows, and in it read to us a paper which he professed to have received from the bishop of Ely, and on the twenty-sixth of July, it was copied into the order-book of the college, as appears from the following extract:

July 26, 1793.

At a meeting of the master and all the fellows resident in college, Mr. French having appealed to the visitor against the sentence contained in the foregoing page, and the visitor having dismissed the appeal, and affirmed the sentence in the following words:

To

To the reverend the master and fellows of St. Rhadegunde, or Jefus College, in the univerfity of Cambridge,

Gentlemen,

I have carefully perufed the appeal of the reverend William Frend*, of your college, againft the proceedings had and fentence paffed upon him, as publifher of a pamphlet, entitled Peace and Union recommended to the affociated bodies of republicans and anti-republicans; by the mafter and major part of the fellows of your fociety, together with the anfwer of the faid fociety, and the reply of the appellant, and the feveral documents therein referred to, and having duly deliberated thereupon, I difmifs the faid appeal, and affirm the fentence of amotion.

I am,

Gentlemen,

Your conftant well-wifher,

JAMES ELY, vifitor.

July 13, 1793.

Agreed, that if Mr. Frend does not quit the college according to the fentence, that no time fhould be loft in enforcing the fentence in the manner pointed out by Sir William Scott, in an opinion given by him on this occafion.

W. Pearce, mafter.

W. Mathew.

Tho. Bayley.

Mr. Frend was not at that time in college, but the mafter informed him by letter, that on the fecond of Au-

* Mr. Frend excufes the bifhop, for giving him a title to which he lays no pretentions, and which fhould be confined to clergymen only.

gust, admission into the college would be denied to him. On that day Mr. Friend returned to college, and about twelve-o'clock received an intimation in writing from the master, that the college servants were prohibited from supplying him in future with any necessaries. Between three and four he went, according to a previous engagement, into the town to dinner, and soon heard that, immediately upon his going out, the college gates were all shut. About seven he went down to the college, found the great gate shut, rang the bell, and, on the porter's opening the gate, walked in, and in a tone of authority, reprimanded the porter for shutting the gates at so unseasonable an hour. From thence he went to the lodge to expostulate with the master on the absurdity of these proceedings, and not finding him at home, left a note, to desire the master to declare, whether the gates were shut by his order or not.

After having thus shewn his perfect contempt of the master's orders, he returned to his friend's house, and spent only one morning afterwards in college. On the twenty-seventh of September, indeed, he intended to revisit the college, but found that Mr. Plampin, from the malignity of whose zeal nothing else could be expected, had taken the precaution to order the gates to be shut, and an iron chain to be kept across the great door. So contemptible a warfare, must degrade the authors of it in the eyes of every impartial man: for, if the master and his cabal had been conscious of the rectitude of their cause, there would be no need of chains and locks, to keep out an individual; but having no idea of propriety, or the respect due to a member of the college, and to the publick at large, they were satisfied with a wanton exercise of power, and neither their oaths, nor the meaning of statutes, came in competition with the meanness of revenge, and the gratification of low intrigue.

With

With the conduct of these men, it is but justice to contrast, for the credit of the college, that of others, who resisted the violence of their proceedings. The protest sent to the bishop of Ely, by three of the fellows, comes from men deserving of respect, as well for their literary attainments, as the probity of their characters. Though they protested against the conduct of their colleagues, they did not approve of several passages in the obnoxious work, but they made a true distinction, by standing up for the rights of every member of the college, which were so indecently violated by the master and his faction. It is the duty of an authour, to give his sentiments with freedom to the publick; and the approbation or disapprobation of that publick ought not to be the rule of his conduct. By such a rule, Mr. Frend is certainly not guided, who writes to inform, and to instruct: who knows, that the judgement of cotemporaries is not always the criterion of excellence, or certainty; and that an attack on prejudices must be subjected to the retort of disapprobation. The protesters had the same right to express disapprobation, as the authour to favour contrary sentiments: those only are in fault, who would injure a man for a difference of opinion. The short interval of twenty years will confirm, or confute the present discordance of opinion on a book, written certainly with the intention of producing general good; and let it be recollected, in the mean time, that the works of Locke, which are now the text of the university, were once the object of general censure.

Of the three protesters, Mr. Newton is a tutour of the college, and in the exercise of his collegiate and academical duties, has always been a perfect contrast to his colleague. Mr. Newton is assiduous in giving lectures, is attentive to his pupils, is exemplary in his conduct, and employs his leisure hours in literary and philosophical occupations. Mr. White-

head's classical merit was distinguished by academical honours, and he is now the much respected master of Sevenoaks school. Mr. Otter's application to mathematics was crowned with success, and the station he holds in the family of a nobleman, who fills the highest seat in the university of Oxford, is a sufficient proof to those, who know it not from personal acquaintance, of the excellence of his character. On the six fellows in opposition, let others enlarge; but as they took upon themselves to speak in contemptuous language of the behaviour of Mr. Friend, it was necessary to shew, that their conduct was reprobated by the best members of the college. From the three gentlemen above-mentioned, Mr. Friend never solicited the least favour in his cause; their conduct was entirely the result of their own feelings, and will always do them honour; they acted as becomes independent men, who are persuaded, that they have no right to proceed to collegiate censures, unless the infliction of them is authorised by the statutes of the college.

It is now time to return to the university. In consequence of the resolutions made at the vice-chancellor's lodge, Mr. Friend was summoned to appear in the vice-chancellor's court, and during a month, in which there were eight court days, the trial was pending. From the sentence of that court, he appealed to the university; and this step will, to a superficial reader, seem extraordinary, since in his protest, he declared, that there could be no appeal from a sentence founded on the statute on which he was condemned, except to the courts of Westminster-hall*. This is strictly true; and if, after an examination of the supposed offence before the vice-chancellor and heads in the proper place, he had refused to

* See page 6.

comply with their terms, the university could not have interfered : but, as the cause was tried in the vice-chancellor's court, an appeal to the senate was not only strictly in form, but absolutely necessary. Without such an appeal, on application to the court of king's bench, the answer of the vice-chancellor would have been : The cause was tried in the vice-chancellor's court, from which, if any faults have been committed, an appeal lies to the university. Such an appeal would then have been dismissed, with this answer : You ought, according to the statutes, to have appealed, within two days after the sentence ; it is now too late, the sentence of the vice-chancellor is irrevocable.

On these grounds the appeal was made ; but every one was aware, that it could not be otherwise of service, than as preparing the business, if necessary, for the courts above. What probability was there of impartial delegates being chosen ? To omit that they were named by one of the heads, who had co-operated with the vice-chancellor in signing the sentence, the cabal had determined, that no person should be chosen, who was likely to decide with impartiality. Without entering at present on the character of Sir W. Wynne, his office under the executive government rendered him unfit for the charge imposed upon him : and it was not to be imagined, that after the outcry, lately raised against every man of liberal opinions, and artfully kept up by the minions of corruption, a king's advocate, and a privy counsellor, should enter upon the investigation of this cause, with the essential quality of a judge, a mind open to truth, unbiassed by party, and free from prejudice. Dr. Seale was still more improper, as he had not only taken a decided part, but at the very time the preservation of his fellowship was depending on an appeal before the vice-chancellor. It is needless to say any thing on the other three ; but from their connections with the cabal, or their offices in the university, there was not the least doubt of their mode

of judging. Instead of giving, as they ought to have done, their opinions separately, they left every thing to Sir W. Wynne, who, in a speech of considerable length, written, we are to believe, if we have faith enough, after the cause had been heard, gave the unanimous judgment of himself and brethren. How five persons could, within the hours of two and six, examine a variety of papers, concur so easily, and draw up their opinion, must puzzle any one unacquainted with the mode of conducting these affairs: but every seaman in the british navy would rejoice to hear, that the same rapidity of decision were to become the practice in those courts of civil law, which are now permitted to batten on the spoils of victory*.

But it may be asked, what became of Mr. Frend, in consequence of the confirmation of the sentence? He appeared at the commencement as usual, and heard a virulent declamation in bad latin from Dr. Kipling, who, though he can speak scarce ten words together in english, addressed in his jargon a formal prayer to the supreme being on the success of his late labours: while, from his attitude, and eyes fixed on the top of the senate house, the audience conceived, that he was enjoying the raptures of another beatifick vision*, and grasping at an ideal mitre, as the reward of his strenuous exertions. The kiplingian harangue had the same effect on Mr. Frend, as on the other hearers; he was called exul et extorris; but these epithets seemed rather inapplicable, when the exile was standing at the professor's elbow. This was, however, no fault in the speaker; the speech had been for a long time written down, and the presence of the

* Sir W. Wynne holds a considerable office in the court of admiralty.

† At a former commencement, this angelick doctour, for so he has been named, from a comparison drawn between him and St. Thomas Aquinas, amused the wags of the university with his account of a nocturnal visit from alma mater to her favourite son,

exile was neither expected, nor desired : it was hard, that Mr. Frend should, in defiance of the speech, walk up and down the senate house as usual, and laugh at him and his folly. After a three week's residence longer in college, Mr. Frend retired to the hospitable mansion of his friend Mr. Hammond, under whose quiet roof, he soon recovered from the fatigues of academical warfare.

In this retirement, the uniform support, which he had received from the most respectable members of the university, naturally filled his mind with pleasing reflections. He can never forget the kindness of his three friends, Mr. Tyrwhitt, Mr. Lambert *, and Mr. Jones †. They accompanied him into court, sat down at his table, assisted him with their advice, and enabled him to oppose with fortitude the attacks of the cabal. Their characters stand much too high in the opinion of the university, to be elevated by any commendation in this place; but it may be permitted to say, that all good men rejoiced, and the bad were abashed, at seeing their ability and integrity opposed to the spirit of persecution and meanness. The ill health alone of Mr. Marsh ‡, prevented him from being of the number : but the step, taken by him in an early stage of the business, though unauthorised by Mr. Frend, proved the sincerity of that friendship, which had been long cemented between them. To Mr. Reynolds §, thanks are justly due, who, on the day of defence, put on his gown again, and, by sitting at the table of the accused party, gave another testimony of that zeal for the cause of liberty, which has uniformly ani-

* Senior fellow and bursar of Trinity college.

† Head tutor of Trinity college.

‡ Fellow of St. John's college, whose learning is conspicuous in the notes to his late translation of Michaelis's introduction.

§ R. Reynold's; Esq. of Paxton, in Huntingdonshire.

rated him through life: and his nephew* is intitled to similar acknowledgements, for numberless kind offices during the whole of the trial. To enumerate all the testimonies of regard which this cause excited, in favour of an injured man, would appear ostentatious; but they will always live in a grateful memory, and both console him for the troubles which he has undergone, and rescue the university from the opprobrium, to which, from the conduct of the twenty-seven, it must otherwise for ever have been exposed.

The publick is now left to form its judgement on the proceedings both of the college and the university: it is incumbent only on the accused party to state briefly the reasons for his mode of defence. Being firmly persuaded, that the attack made on him, was the result of faction and intrigue, he was not to be awed by the superiority of numbers, nor the treachery of the assailants; but, leaving them to the use of those arts, which a mind formed for literature must always despise, he was resolved not to decline the combat, but to enter the lists at the proper time, armed with confidence in the justice of his cause, and a knowledge of the laws of the university. On these principles he obeyed the summons into the vice-chancellor's court; but by his protest, and by stopping the proceedings of the first day, he made it evident, that both the judge, and the accusers, led away by the desire of gratifying revenge, were little qualified for their respective offices; and, at the same time, he confounded the murmurs which had been artfully raised by his enemies, and too easily acquiesced in by some of his friends, that he ought to come forward boldly, and avow himself the authour of the work. These objecters did not consider, that he came into court on a summons which

he supposed illegal; that the articles of accusation answering to an indictment in the common proceedings of law, were not known to him till he appeared in the court; and that it would have been absurd to determine the particulars of his conduct, or to have made them known, before he had seen of what he stood accused. He therefore availed himself of the law of the university, which very properly orders, that the accusation should be delivered on the first, and that no witnesses should be called till the second, court day. Of this law the vice-chancellor and the accusers had till that time probably never heard; and they did not see the propriety of it, both from their ignorance of the civil law in general, and their inattention to the circumstance, that the defendant receives a copy of the articles only on the first day of appearance.

There was not a person in court who entertained the least doubt that Mr. Frend was the authour of the book in question; but as the cabal had no right to interfere with his publications, except they had the ability to answer them, he determined, that, in endeavouring to prove this point, they should expose their folly to the utmost. That they failed in their endeavours, is no wonder; and that the learned accuser should make so contemptible a figure, when he came to the obnoxious passages in the book, did not surprize any one, who had seen him in the pulpit at St. Mary's, or in his chair in the divinity schools. The charges are contemptible in the extreme, and do not attack those points, on which Mr. Frend might have reason to expect the censures of the church: and, in perusing his defence, the reader is to carry in mind, that the reply is made to the propositions in the articles; and though the authour should maintain a variety of sentiments, which his accusers may think obnoxious to the statutes, still, if they are not expressed in the articles, they cannot be made the grounds

for punishment. Thus, on the charges relating to idolatry, and ecclesiastical ranks, the answer in plain language given in court was, that they were false; and on more mature deliberation, the authour repeats his declaration, and calls upon the twenty-seven to vindicate themselves; and if they have the least spark of honour remaining in them, or regard for their pretended character of men of letters, to reply to the papers on this subject delivered into the vice-chancellor's hands. The other two charges on the liturgy, and the most sacred offices of the church, do not come within the statute, but they are equally entitled to the epithet bestowed on the two former articles. Mr. Frennd's objections to the church of England are on very different grounds from those stated in the articles; and he quitted it, not on account of its ranks, or courts, not on account of its offices, not on account of the less important defects of its liturgy, but because the church worships the trinity, and recites a creed under the name of Athanasius, which appears to him a monstrous compound of various figments of metaphysicians and philosphers.

But it has been objected, that the defence should have been conducted in a more serious manner. Had the cause related to the serious concerns of religion, a different mode of conduct would have been pursued; but, from the nature of the case, it was scarcely possible to retain throughout a serious countenance. Did a painter wish to describe persecution in the most ridiculous and at the same time the most odious light, could he choose a better attitude and better colours than those of the promoter before the senate? The english are famous for that species of humour called caricature, but the chief inquisitour with his groupe of familiars, delineated to the life, would exceed the boundaries of the art. The natural insignificance of Jowett, the impotent irascibility of Mainwaring, the blustering of Belward, and the self-importance of Mansell, it is in vain to look for words to express.

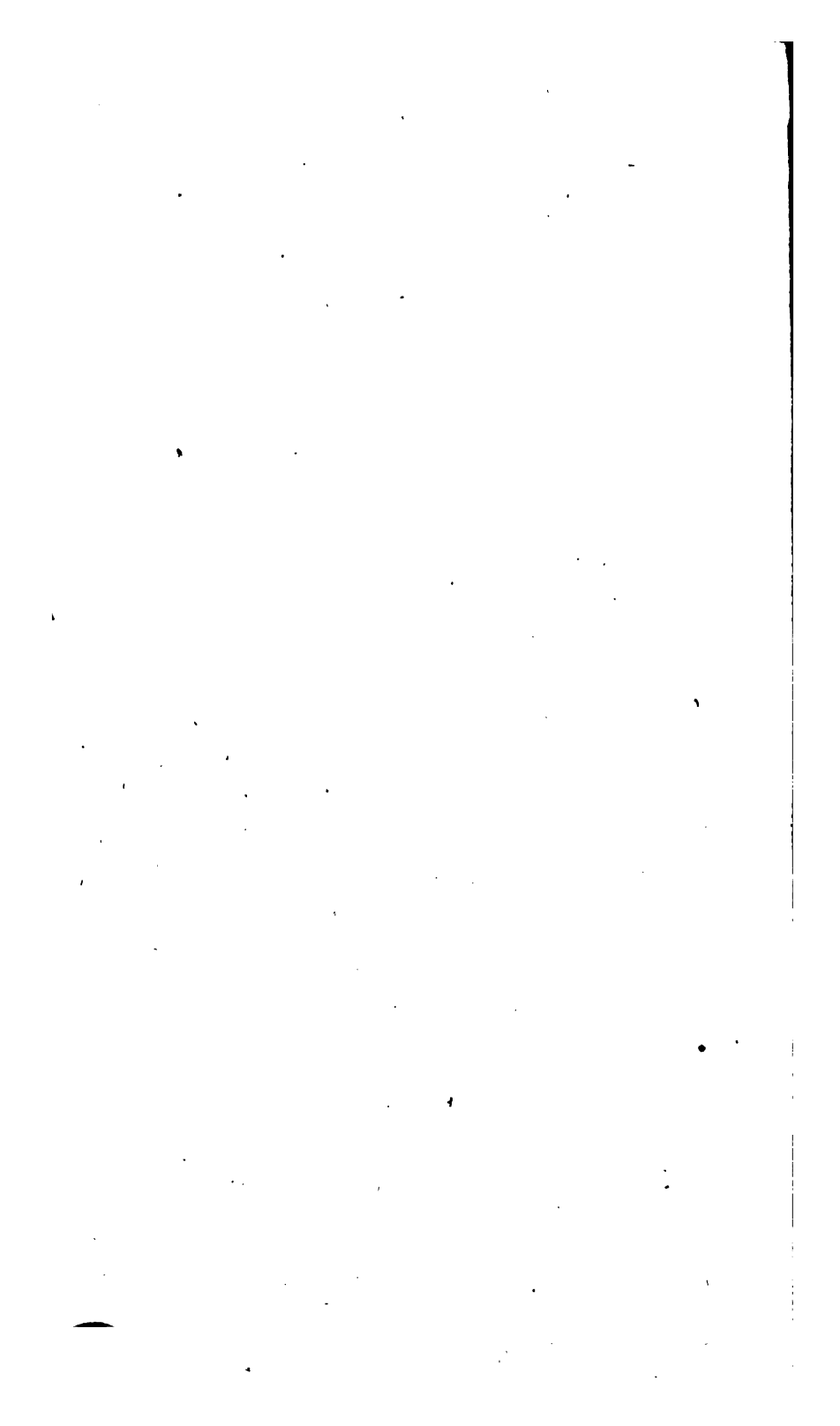
express. The idea in the speaker's mind was to hold them up to the ridicule and contempt of the audience: to its ridicule, for acting the parts they had undertaken in so absurd a manner; to its contempt, for presuming to disturb the peace of the university with their paltry contentions, and, for the sake of ingratiating themselves with the higher powers, to aim at the ruin of an individual. But, in giving this salutary discipline to such characters, he had an eye to a very important part of the community, and he wished to impress deeply on their minds the folly and wickedness of every attempt, to deprive men of the liberty of canvassing opinions with freedom, and to take away the rights of a studious man, because he communicated his sentiments with the publick. Imperfect as the execution was, the audience went away in general with a lively sense of his leading ideas: on the judges he did not expect to make an impression; for their plan was already formed, and not an angel from heaven, no, not any person but a prime minister could have produced a change in their resolutions.

The proceedings of the two courts are given from official papers received from the registry and bedell, and notes taken down by Mr. Lambert. Mr. Friend's speech was written down by himself a few days after the delivery of it, and, though his memory is not very tenacious, he has been enabled by the notes of Mr. Lambert to give not only the order and leading ideas, but in general the very expressions used. The reader will naturally make allowances for a composition confined to the rules of speaking, not of writing, two very different things, and recollect that the latter is to the former what an engraving is to a picture. The inverted commas mark the parts omitted by the registry, and the official papers are printed exactly as they were delivered, excepting that the names of the heads present are omitted after

the first day, because no other alteration took place in them than that Dr. Postlethwaite was absent on the 11th, 13th and 17th of May, and Dr. Peckard made his appearance only on the 28th of May. To the defence of Mr. Frend, Dr. Kipling's reply, and the vice-chancellor's speech at the conclusion of the business in his court, the inverted commas are omitted. They are also omitted in the account of the proceedings before the delegates, the only official papers in that court, being the *acta curiæ* the protests of Mr. Tyrwhitt and Mr. Frend and the citation: the rest was supplied by the attention and friendship of Mr. Lambert.

That at the close of the eighteenth century there should be found members of the church of England and of the university of Cambridge, capable of carrying on a prosecution on questions of controversy, is matter of extreme regret to the publisher of this work, as it must be to every liberal mind; and, if it were not with the view of deterring every future effort of bigotry and intrigue, he could wish, for the credit of his country and his university, that the proceedings, which this publication contains, were buried in oblivion. A protestant establishment should disdain the use of coercive measures, and if attacked should defend itself by the force of reason, not the arm of compulsion. But, as long as religion is made a stalking horse to places of preferment, neither learning nor philosophy will prevent many of its advocates or pretended advocates from uniting in the vulgar cry against any one, who assumes the right of thinking for himself and rejecting the dogmas of the prevailing party. Though the twenty-seven are in general very deficient in literary merit, and have still less claim to theological distinction, philosophy feels herself degraded in seeing the name of a Wollaston associated with men of such inferior characters and groveling minds; and the distinguished exertions of the father in the cause
of

of religious liberty render more striking the son's apostasy. From one, whose early years were employed in the laborious occupation of mechanick life, the manners of a gentleman and the taste of a scholar are not to be expected, and the disadvantages under which he laboured, sufficiently account and apologize for these defects in the character of a Milner, while they enhance the admiration of powers, which, without meliorating the heart, have distinguished his pursuits in abstract science. It is not to be wondered at, that he should join in an attack on the freedom of the press, which however arose from and was pursued by men with very small pretensions indeed to literature or philosophy: and the little encouragement they received, will, it is to be hoped, prevent any similar attempts in future. For, however branded the french may now be for atheism, the common opprobrium of the early christians, the new article in their code, prohibiting a distinction to be made in civil rights on account of religious questions, must from the nature of things be in no distant period adopted not only in this but in every country of the world. Then will a future generation scarce credit the report, that a celebrated university was employed, like a spanish inquisition, eight days in investigating the question, whether one of its members, for publishing some remarks on ecclesiastical affairs, should be subjected to the sentence of banishment.



PROCEEDINGS

IN

THE VICE-CHANCELLER'S COURT.

ACTA CURIÆ.

At a court holden before the right worshipful
ISAAC MILNER, D. D. vice-chancellor of the
university of CAMBRIDGE, and LOWTHER YATES,
JOHN SMITH, WILLIAM CRAVEN, FRANCIS BARNES,
JOHN BARKER, JOSEPH TURNER, THOMAS POSTLE-
THWAITE, RICHARD FARMER, D. D. and JOHN
FISHER, LL. D. his assessors, between the hours
of ten and one, on Friday the third day of May,
in the law-schools of the said university, me-
present,

GEO. BORLASE,
Noty. Publ. and Registr.

The office of judge
promoted by Tho-
mas Kipling, D. D.
agt. William Frend,
A. M. fellow of Je-
sus college.

ON which day a fummons, here-
tofore issued against William
Frend, A. M. and fellow of Jesus
college, was returned by John Be-
verley, esquire bedel, who made oath that the same
had been personally served on the said William Frend.

B.

Mr.

Mr. FRENDE appeared: and the court was adjourned to the senate-house. Dr. Colman appeared at the adjourned court; when and where Mr. Frende expected to the court, in a certain paper, purporting to be a renunciation of the jurisdiction of the said court; which paper he read and signed in the presence of the registry, who attested the same, and delivered it to Mr. vice-chancellor. Mr. vice-chancellor, after deliberating with the assessors, pronounced for the jurisdiction of the court, and ordered Dr. Kipling to bring forward his charge. Mr. Frende desired that the renunciation might be entered on the records of the court, and that the grace, 'Cum statutis academiarum,' Oct. 24, 1609, might be read; part of which was read by Mr. Frende, Mr. vice-chancellor objecting to the reading the whole at that time, and saying it might be read in the course of his defence. Dr. Kipling desired that the charges may be exhibited in writing, which was allowed; and the said charges or articles were read, and a copy of the same was ordered by Mr. vice-chancellor to be delivered to Mr. Frende, and was so delivered. The first article the defendant denied, so far as concerns the cause in question; which denial was over-ruled by the court. Mr. Frende asked Mr. vice-chancellor, whether it was over-ruled with the concurrence of the heads. Mr. vice-chancellor declared that it was over-ruled, and is now over-ruled, with the concurrence of the heads.

The second article was then read, and Dr. Kipling proposed to call witnesses. Mr. Frende objected to the calling any witnesses until the secundus dies juridicus, and read a part of the grace, 'Cum statutis,' &c. beginning at the words, 'secundo die juridico,' to the words, 'per reum datis,' and required time to answer, according to the statutes. Mr. vice-chancellor declared

clared that the demand made by Mr. Frend, as founded on the grace aforesaid, was not good; nevertheless he judged it reasonable to allow him proper time to prepare himself, and accordingly adjourned the court to be holden at the senate-house, on Friday the tenth instant, at ten o'clock in the morning, and warned Dr. Kipling and Mr. Frend then and there to appear,

C I T A T I O N .

To JOHN BEVERLEY, WILLIAM MATHEW, and HENRY GUNNING, esquire bedels of the university of CAMBRIDGE, or their lawful deputy or deputies.

SUMMON WILLIAM FREND, master of arts, and fellow of Jesus college in the university of Cambridge, to appear before me, or my lawful deputy, and my assessors, at my next court, to be held in the law-schools in Cambridge, on Friday the third day of May next, between the hours of ten and eleven in the forenoon of the same day, in a certain cause of office promoted by the reverend Thomas Kipling, doctor in divinity, and member of the said university, the said cause of office or matter of complaint arising within the jurisdiction of the said university; then and there to answer to an accusation laid before me, in which the said William Frend is charged with having violated the laws and statutes of this university, (particularly the statute de concionibus) by publishing and causing to be dispersed, within the said university, a certain pamphlet, intituled 'PEACE AND UNION RECOMMENDED TO THE ASSOCIATED BODIES OF REPUBLICANS AND ANTI-REPUBLICANS,' of which doctor Kipling, the above-mentioned promoter of this cause, affirms him to be the author,

and in which, according to the accusation of the said doctor Kipling, religion, as established by public authority within this realm, and also all ecclesiastical ranks and dignities are impugned; and so from court day to court day until the said cause be ended, and further to do and receive as to law and justice shall appertain. Hereof fail not at your peril. Given under my hand and seal, at Queen's College, Cambridge, this twenty-third day of April, in the year of our lord one thousand seven hundred and ninety-three.

(Signed)

I. MILNER, (L. S.)
Vice-Chancr.

JOHN BEVERLEY.

[Copy.]

“ On the vice-chancellor's calling upon Dr. Kipling to open the cause as promoter, Mr. Frend addressed the court in the following words, of which he afterwards delivered a copy, legally executed, into court.”

“ Mr. VICE-CHANCELLER,

“ I desire leave, before my accuser enters on his office, to offer a few things in the way of objection to the mode of trial adopted by him, and authorized by you: they will, I hope, be found not unworthy of your attention.

“ I acknowledge the receipt of a citation from you to attend in this place at this hour, and my presence here is entirely owing to that circumstance; but I wish it to be considered as proceeding more from civility and respect, than duty or obligation: the reason of which distinction will be obvious from what I am going to alledge.

“ My

“ My accuser charges me with the publication of a pamphlet, intituled, ‘ Peace and Union recommended to the associated bodies of republicans and anti-republicans:’ and, by such publication, with impugning religion as established by publick authority within this realm, and also all ecclesiastical ranks and dignities: and by such impugning, with having violated the laws and statutes of this university, particularly the statute de concionibus.

“ Now the violation of the statute de concionibus being made the principal charge against me, I apprehend that I ought not to have been cited to appear in the vice-chancellor’s court, but before the vice-chancellor and a majority of the heads of colleges, all offences against that statute being made cognizable by him and them jointly: and that there is no instance of any person being cited to appear here for such an offence. The difference between the vice-chancellor’s court and a meeting of the vice-chancellor and a majority of the heads of houses, I suppose to consist in the following particulars:

“ I. The vice-chancellor’s court subsists by antient custom, and charters confirmed by an act of parliament, and ought to be held at stated times for the purpose of receiving complaints, and hearing and determining causes. Whereas the other meeting derives its existence and authority wholly from queen Elizabeth’s statutes, and, from the nature of it, can only be occasionally assembled, in the same manner that the same or other persons meet occasionally in the senate or other place, for the execution of other parts of the same statutes.

“ II. The vice-chancellor’s court is a court of record, from which no appeal can go to any of the courts in
West-

Westminster-hall, but only to the senate of the university. Whereas I apprehend that no appeal can go to the senate from a determination of the vice-chancellor, and heads acting under the statute de concionibus; though such determination, like that of a mayor and aldermen in any civil corporation, may be liable to a review in the court of king's-bench.

“ III, The vice-chancellor, sitting in his court, possesses the power of punishing all offences cognizable in it, without the concurrence of a majority of the heads of houses, such concurrence being in no case necessary to enable him to punish, but only to punish in a particular manner. Whereas in the exercise of the power given in the statute de concionibus, such concurrence is in every step made absolutely necessary.

“ IV. The immediate object of a citation into this court is punishment: whereas the immediate object of a citation before the vice-chancellor, and a majority of the heads, under the statute de concionibus, is not punishment, but the revocation of error.

“ V. There is no pretence from the statute, nor from any practice under it, for the appointment or allowance of a promoter, such office being peculiar to ecclesiastical courts.

“ VI, The vice-chancellor has undoubtedly, in his court, the power of compelling evidence, and that upon oath; neither of which can, I suppose, be done by him and a majority of the heads, assembled for the purpose of enforcing the statute de concionibus.

“ For these reasons, at least till stronger ones to the contrary shall be alledged, I think myself obliged to re-
nounce

nounce the jurisdiction of this court, and do hereby renounce such jurisdiction, so long as the violation of the statute de concionibus is made the principal or any part of the charge against me. And though I should, in the first instance, have willingly submitted to answer for any supposed breach of that statute, before the vice-chancellor, and a majority of the heads of houses, or before the vice-chancellor in this court, for the breach of any other law of the university, properly cognizable in it, I now desire time to be advised whether, having been wrongfully cited to appear in this court on a supposed offence against that statute, with the acquiescence at least, if not the approbation, of the heads of colleges, I am any longer liable to a trial for the same offence, either before the vice-chancellor and heads, under the statute so often mentioned, or by the vice-chancellor alone, under any other law and statute of the university.

“ The vice-chancellor, after a consultation with the commissary, retired to the gallery with the commissary and heads of colleges: in about half an hour they returned, and the vice-chancellor pronounced for the jurisdiction of the court. Mr. Frend then desired that the grace passed in 1609, on the order to be observed in the university courts, might be read; to which the vice-chancellor objected, saying, it might be read when Mr. Frend came to his defence. Mr. Frend urged the necessity of reading it now, as it directed the whole proceedings of the court: but the vice-chancellor desired the promoter to proceed.

“ Then the promoter rose, and Mr. Frend, rising at the same time, addressed the vice-chancellor, and desired that the accuser might not be permitted to speak till he had put on his proper academical habit. At this

a violent burst of laughter and clapping from the audience ensued. The vice-chancellor seemed vehemently moved, and looked up to the gallery, as if going to reprimand the young men; but the burst was over, and the noise had ceased before the vice-chancellor could speak to order.

“The promoter said, that the vice-chancellor, he supposed, would be required next to put on his robes too. The vice-chancellor treated Mr. Frend’s requisition as frivolous; and Dr. Kipling began by praying, that the charges might be accepted in writing, and a copy of them, with a copy of the pamphlet annexed, given to the defendant. This was allowed, and the charges were read by the promoter.”

UNIVERSITY OF CAMBRIDGE, May the 3d, 1793.

In the name of God, Amen. We Isaac Milner, doctor in divinity, vice-chancellor of the university of Cambridge, and judge of the court of the chancellor, masters and scholars of the said university, lawfully constituted and appointed, to you William Frend, master of arts, and one of the fellows of Jesus college in this university, do give and minister all and singular the articles, heads, or interrogatories under-written, for certain crimes and offences said by you to have been committed, but more especially for having written, published, and caused to be dispersed within the said university, a book or pamphlet, intitled ‘Peace and Union recommended to the associated bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jesus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793, (Price One Shilling.)’ In which said book or pamphlet religion, as established by public authority within this realm, and also all ecclesiastical
ranks

ranks and dignities, are impugned: at the promotion of the reverend Thomas Kipling, doctor in divinity, and a member of this university: and we do object and article as follows, (that is to say)

In the first place, We article and object to you the aforesaid William Frend, that the university of Cambridge was founded and endowed, and by act of parliament, made in the thirteenth year of the reign of queen Elizabeth, was incorporated by the name of the chancellor, masters, and scholars of the university of Cambridge, for the maintenance of godly literature, and the virtuous education of youth within the said university; and moreover, that the letters patent granted to the chancellor, masters, and scholars of the university of Cambridge, in the third year of the reign of our then sovereign lady queen Elizabeth, and all other letters patent, granted to the said university by any of the progenitors or predecessors of our said queen, were by the said act of parliament declared to be thenceforth good, effectual, and available in law, to all constructions and purposes: and we object and article the premises, jointly and severally, and every part thereof.

2d. Also, We article and object to you the aforesaid William Frend, That in this present year of our lord one thousand seven hundred and ninety-three, you did publish, and cause to be dispersed within this university, a scandalous book or pamphlet, of which you are the author, intitled, Peace and Union recommended to the associated bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jesus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793; which said book or pamphlet is annexed to these presents, and prayed to be admitted as if inserted herein: and we article and object as above.

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3d. Also,

3d. Also, We article and object to you the aforesaid William Frend, That in the twenty-ninth page of the aforesaid book or pamphlet you have defamed the public liturgy of the established church, by affirming that ' it is very far from the standard of purity in doctrine, which is required in such compositions : ' and we article and object as above.

4th. Also, We article and object to you the aforesaid William Frend, That in a paragraph, contained in pages thirty-six, thirty-seven, and thirty-eight of the aforesaid book or pamphlet, beginning at the words, ' The same passions, ' and ending with the words, ' episcopal convocations, you affirm that the publick worship of the great body of christians is idolatrous; including in this charge the members of the church of England, as evidently appears from the context : and we article and object as above.

5th. Also, We article and object to you the aforesaid William Frend, That in the thirty-ninth page of the aforesaid book or pamphlet, you have asserted, that ' ecclesiastical courts, ecclesiastical ranks and titles are all repugnant to the spirit of christianity : ' and we article and object as above.

6th. Also, We article and object to you the aforesaid William Frend, That you have profanely reviled and ridiculed the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers, in the following passage contained in the thirty-ninth and fortieth pages of the aforesaid book or pamphlet, (that is to say) ' The laity, like brute beasts, sit tamely under this usurpation : a man, if a priest or minister enters, is not master of his own house ; he must not thank God for the blessings of providence at his own table;

table; he cannot pledge his faith to a lovely woman without the interference of the priest; his offspring must be sprinkled by sacred hands, and at death he is not committed to his long home without another incantation.

‘ These superstitious prejudices are, without doubt, highly beneficial to the interest of the clerical community; but the morals of neither party are consulted. The laity are apt to imagine that there are some practices in which they may be indulged without any imputation on their christian character; and the gentleman in black is supposed to put on a particular set of features and behaviour with his clothes:’ and we article as above.

7th. Also, We article and object to you the aforesaid William Frend, That at the time of publishing the aforesaid book or pamphlet, you was a master of arts and member of this university, and that you now are a master of arts, and a fellow of Jesus college in this university, and therefore notoriously subject to the jurisdiction of this court: and we article and object as above.

8th. Also, We article and object to you the aforesaid William Frend, That by the laws and statutes of this university, particularly by the forty-fifth statute, intituled, ‘ De Concionibus:’ and by a decree passed in the senate of this university, on the ninth day of June, one thousand six hundred and three, it is ordained and provided, That all and every person or persons impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may and ought to be proceeded against, and punished by suspension from academical degrees, by expulsion or by banishment: and we article and object as above.

9th. Also, We article and object to you the said William Frend, That of and concerning the premises, complaint hath been and is rightly and duly made by this party, promovent to this court and the judge thereof.

Wherefore the party promovent in this cause prayeth right and justice to be done and administered to him effectually; and that the said William Frend, in regard of his great rashness and presumption in the premises, may be duly corrected and punished as the law requires.

“ The articles having been read, Mr. Frend objected to article 1st, as far as it concerned the cause in question. The vice-chancellor declared that objection already over-ruled by the court.

“ Q. from Mr. Frend. By your own authority, or conjointly with the heads?

“ V. C. By my own, and the heads as my advisers,

“ Q. Did they concur with you?

“ V. C. They did,

“ Q. Do they now? The vice-chancellor turned to the bench, and now asking the heads, declared, They concurred before, and do now.

“ The second charge was read by the promoter; and HARVEY ALGER being called as evidence, Mr. Frend objected to the calling of any witnesses in the part of the promoter on this day, and read a part of the grace of 1609, which directs that the witnesses should be called only secundo die juridico.

“ The

“ The vice-chancellor said, it was not necessary to comply literally with that grace. Being asked by Mr. Frend, on what account, the vice-chancellor said, That the difficulty of observing it would be very great; that it never had been accurately observed; that it would clash with some of the statutes, and particularly it would limit the power of summary proceedings. Mr. Frend still urging the propriety of its being strictly attended to, was asked by the vice-chancellor, Do you then insist on the promoter’s witnesses not being called till the second day?

“ F. I do.

“ V.C. Do you wish for time to prepare your defence?

“ F. I wish for all the time allowed me by the statute. The commissary then interposed, and said, These witnesses might be admitted now by the first part of the statute. On being asked by Mr. Frend, What part? he said, That this delay was dispensed with, if the cause was levior et ordinaria. Mr. Frend asked, Can that cause be called one of the leviores, which may drive the accused from the university, and deprive him of his degrees? The commissary answered, That the distinction between leviores and graviores causas did not arise from the magnitude of the consequences, but from the ease or difficulty of proof.

“ F. If you allow it to be a causa levior, your proceedings, to be sure, may be summary. The promoter observed, the appointment of a second day seemed intended as an indulgence to the actor, to prepare, &c. but this indulgence he did not desire, and was ready to proceed now. Mr. Frend replied, I do not know that the actor is meant to be particularly indulged in this grace. I conceive it to be for the benefit of all parties; and as such I do desire that the time may be allowed,

lowed, and that the actor may be required to proceed according to law.

“ V. C. You desire time, then, for your defence ?

“ F. I desire the time allowed by law.

“ The vice-chancellor then retired with the commissary and heads, to the lobby; and after remaining rather longer there than on the first journey, returned, and desired the registry to read his notes, which were then altered, in various instances, by the commissary. A long conversation now took place between the vice-chancellor and commissary; after which the vice-chancellor, addressing Mr. Frend, said, that though he did not think his demand for time, as founded on the statute good; yet, as he judged it reasonable to give him time to make his answer, it was allowed: and the court adjourned till Friday, May 10th, ten in the morning, in the same place.

“ Mr. Frend desired the court would understand, that he did not, in this demand, mean to make his defence that day: it was appropriated to the examination of the promoter’s witnesses, and to that business only he should expect the court to attend.”

ACTA CURIÆ.

At a court holden, &c. between the hours of ten and four, on Friday the tenth day of May, &c.

ON the opening of the court, the judge asked Mr. Frend, if he was now ready to answer to the charges laid against him. Mr. Frend declared, that he did not
come

come with the idea of answering to the charges this day, but that he was ready to act according to the laws of the university, and referred again to the grace, (page 369.)

On which the vice-chancellor said, that as Mr. Frend, on the last court-day, urged the necessity of adhering strictly to the grace, 369 p. and, according to his own explanation of what is there stated, he thought it expedient now to explain his ideas concerning the meaning and authority of it. The vice-chancellor then gave his reasons at large in support of the present proceedings, and explained, according to the best of his judgment, in what sense this grace is to be considered as obligatory, and in what sense its authority could not be admitted. He said, this court had unquestionably authority to proceed more or less summarily, and in the present instance he did not yet perceive the shadow of a reason for departing from the usual practice. He added, that he was ready to listen with the utmost attention and patience, as long as any thing could be advanced on either side. His object was to do substantial justice, and he exhorted both the accuser and the accused to use no unnecessary delay.

Question from Mr. Frend. Whether the judge meant to proceed according to the statute 'De Concionibus' simply, or whether that statute made a part of of the law under which the judge was now proceeding?

Answer. The judge certainly considered himself as not acting under that statute separately; but as part of the law under which he would proceed.

Question from Mr. Frend. Whether the judge said this from his own authority, or with the assent and consent of the heads?

Answer.

Answer. He did not think it necessary to answer that question repeatedly.

Mr. Frend then protested against the court now proceeding, as, he said, there was not now present with the vice-chancellor a majority of the heads; and therefore he could not proceed to take examination on oath, as long as the statute 'De Concionibus' is made a part of the statutes on which the accusation is founded.*

Dr. Kipling then read the second article; and the vice-chancellor asked Mr. Frend, whether he admitted or denied the same.---Answer. That he had before denied them all generally, asserting them to be false, wicked, and malicious.

Witnesses were then called on the part of the promoter, viz. Harvey Alger, Philip Life, Rev. Thomas Lloyd, A. M. John Bowtell, and Rev. Charles Dickins, LL.D. and the same were sworn and examined, and were also cross-examined by Mr. Frend: and the court was adjourned to to-morrow the 11th instant, at twelve o'clock.

FIRST WITNESS EXAMINED, 10TH MAY, 1793.

Harvey Alger was called by the promoter, and sworn; and a book being put into his hand, deposed as follows:

Question. Did he ever see that book before?

Answer. Yes.

Q. Whether he purchased it of any one?

A. Yes.

* Dr. Postlethwaite, master of Trinity college, was absent on this day.

Q. Of whom?

A. Of Mr. Lunn, the bookseller.

The commissary asked, "Is that the book that was delivered to Alger?"

A. "Yes."

Q. "Has it been in his possession?"

"Mr. Frend observed, that it ought never to have been out of court, and conceives that the commissary must join with him. Nothing was said in reply."

Q. About what time?

A. On Friday 19th April, 1793.

Q. Who delivered that book into his hands?

A. Mr. Lunn's journeyman.

Q. How does he know that to be the very book he received from Mr. Lunn's foreman?

A. By having marked it on the cover, and by an L for Lunn.

Q. Did he make these marks before he delivered the book out of his hands?

A. Yes.

Q. Can he say, on his oath, that that is the very pamphlet he delivered into Dr. Kipling's hands the last court-day?

A. Yes.

Q. How does he know it to be the very same?

A. By the letter L, which he knows to be his handwriting; "and there are other marks."

Q. Whether he looked at the letter L particularly, when he delivered the book into Dr. Kipling's hands the last court-day?

A. Yes.

D

Q. Did

Q. Did he look at it again, particularly when Dr. Kipling returned it to him.

A. Yes.

Q. Had it been in possession of any other person besides himself, since the former court-day?

A. No.

Q. by the commissary. "At what time was it delivered to you?"

A. "At the close of the business in court."

Q. from the court. Where does Mr. Lunn live?

A. In Trompington-street.

Q. to Dr. Kipling. "Have you any more questions to ask?"

A. "Not any very material or necessary now."

Q. Can he read?

A. Yes.

Witness was ordered to read the title of the said pamphlet, and read as follows: "Peace and Union recommended to the associated bodies of republicans and anti-republicans: by William Friend, fellow of Jesus college, Cambridge. Printed for the author, by P. C. Croft, St. Ives, 1793. Price one shilling."

Q. "from Dr. Kipling." Did he deliver the same book into Dr. Kipling's hands this morning, as he came into court?

A. Yes.

Mr. FRIEND cross-examined the said witness.

Q. Whether the witness is not Dr. Kipling's servant?

A. Yes.

Q. For

Q. For whom did he purchase this book ?

A. For Dr. Kipling.

Q. With what intention ?

A. By Dr. Kipling's desire. " When Dr. Kipling ordered me to buy it, he did not say what was his intention."

Q. When he made the two marks ?

A. He made them " in the kitchen" before he took the book to Dr. Kipling.

Q. Why he was induced to make those marks and letter before he gave the book to Dr. Kipling ?

A. By Dr. Kipling's order.

Q. How long did it remain in Dr. Kipling's possession after the first delivery ?

A. About two days.

Q. Who delivered it into the witness's possession at the end of the two days ?

A. Dr. Kipling.

Q. For what purpose did Dr. Kipling deliver it to the witness ?

A. Dr. Kipling desired him to lock it up.

Q. Did Dr. Kipling assign any reason for its being locked up ?

A. No.

Q. Did the witness keep it locked up ?

A. Yes.

Q. With what intention did he keep it locked up ?

A. With no other intention than by Dr. Kipling's order.

Q. By whose order did he take the book from the place when it was locked up?

A. By Dr. Kipling's order.

Q. Did he bring the book to court the last court-day by Dr. Kipling's order?

A. Yes.

Q. Was this book produced in court?

A. He gave it to Dr. Kipling in the senate-house yard before he came into court, but cannot say what became of it after.

Q. Why it could not have been out of his possession between the last court-day and this?

A. Because he locked it up as soon as he went home, and has always had the key in his possession.

PHILIP LIFE, foreman to **Mr. LUNN**, was sworn, and deposed as follows:

Question. Does he know that servant of Dr. Kipling's, who was just now examined?

Answer. He knows him by sight.

Q. Does he recollect ever delivering to that servant a pamphlet, intitled, "Peace and Union," &c. by William Frend.

A. He does.

Q. Does he recollect about what time he delivered it to him?

A. He does not.

Q. Can he say whence that pamphlet came which he delivered to Dr. Kipling's servant?

A. He cannot.

Q. Had

Q. "Had Mr. Lunn any of those pamphlets in his shop on the 19th of April last, except the twenty copies which the witness himself had received from Mr. Friend?"

"This question was over-ruled by the vice-chancellor and Mr. Friend, as putting words into the mouth of the witness. Mr. Friend said, he prompted the last witness, and is now prompting this."

Q. Did he ever receive any copies of the pamphlet, intitled, Peace and Union, &c. by William Friend, A. M., from Mr. Friend himself?

A. He did.

Q. How many copies?

A. Twenty copies.

Q. On what day?

A. Third of April last.

Q. Had Mr. Lunn any copies of this book at that time unfold?

A. Not that he knows of.

Q. Did Mr. Lunn, to the witness's knowledge, procure any copies of this pamphlet from any other quarter, between the third and nineteenth of last April?

A. Not that he knows of: at least he did not go for any.

Q. At what place did he receive those twenty copies of the pamphlet from Mr. Friend?

A. At Mr. Friend's rooms in Jesus College.

Q. Why did he go thither for any copies of the pamphlet?

A. He applied to Mr. Bowtell for some copies; but Mr. Bowtell had none; but Mr. Bowtell told him, that Mr. Friend had them all.

Q. Was

Q. Was he directed by Mr. Lunn to go to Mr. Bowtell for some copies?

A. He was.

Q. What did he say to Mr. Frend, when witness went first to Mr. Frend's chambers?

"Mr. Frend asked the court, whether such questions were proper. Dr. Kipling insisted upon the question being asked, and it was therefore asked."

A. He cannot say exactly what the words were. The purport of them was, that he presented Mr. Lunn's compliments to Mr. Frend, and, having sold all the copies of his pamphlet which he had, would thank him for fifty more copies.

Q. Does he recollect whether he asked Mr. Frend for copies of his pamphlet?

A. He does.

Q. Did Mr. Frend make any answer, and what to him, on that occasion?

A. As near as he can recollect, Mr. Frend said, that he did not think he had fifty copies: but that Mr. Lunn should have all he had.

Q. "Did Mr. Frend, immediately after this, deliver you any copies?-----The commissary thought this a leading question; and therefore the promoter asked,"

Q. What did Mr. Frend do immediately after this?

A. When he went to Mr. Frend's rooms, he was not in them. Some little time afterwards he saw him standing in the court; when he went up to him, and delivered the message, which he has repeated as near as he could recollect. He then went to Mr. Frend, into his rooms, when he delivered to the witness twenty copies of the pamphlet, intitled, "Peace and Union."

Q. What

Q. What did witness do with the twenty copies of the pamphlet?

A. He brought them home to Mr. Lunn's shop.

Q. "I think you said, you told Mr. Friend." Witness mentioned to Mr. Friend, that Mr. Lunn had sent him for more copies of the pamphlet, because Mr. Lunn had then none remaining in his shop,---was this a part of Mr. Lunn's message, or not?

A. As near as he can recollect, it was.

Promoter. "I will explain the purport of my question in a few moments. I wish to know whether Mr. Lunn had any unfold on April the 3d. When first asked the question, he seemed uncertain; he now speaks positively that he had not."

Mr. Friend asked, "Why he remembered the day when he came to his rooms?"

A. "Because I gave Mr. Friend credit in Mr. Lunn's ledger on that day.

Q. "By whose instructions did you take the memorandums now in your hand?"

A. "They are only dates. Mr. Lunn thought it proper for me to take them down."

REV. THOMAS LLOYD, A.M. was called.

"Before Mr. Lloyd was sworn, Mr. Friend asked the court, whether a party in the accusation could be admitted as an evidence in the cause, and proceeded,---I understand that Mr. Lloyd, now standing in this court, was one of the twenty-seven, or of the number which assembled at the vice-chancellor's house, and there entered into certain resolutions respecting this cause. By which resolutions Dr. Kipling, Dr. Jowitt, Mr. Mansell,

fell, Mr. Belward, and Mr. Mainwaring, were appointed managers, as I understand, to carry on in their names this prosecution: a copy of which resolutions I requested Dr. Kipling to send me; but he returned me answer, in writing, that he had them not. I sent a second note to Dr. Kipling, to desire to know by what means I might procure a copy of these resolutions. He returned me answer, in writing, that they were in possession of the vice-chancellor. I wrote, between the hours of twelve and one on that day, to the vice-chancellor, and receiving no answer, I wrote again, between five and six, requesting, that as my interests were very much involved in these resolutions, I might be favoured with a copy of them. Between seven and eight the vice-chancellor sent me word, in writing, that he did not think himself authorized to comply with my request. I now again make that request; considering the production of that paper as necessary to the conducting of my defence in the prosecution of this cause, and being fully convinced, whether those resolutions are to any purpose or not in themselves, that a very bad use has been made of them by the twenty-seven, to prejudice me in the eyes of the publick, and of the university.

“The vice-chancellor turned to the commissary, and after some little conversation, addressed Dr. Kipling.

“Dr. Kipling, Mr. Friend desires to see the resolutions: have you any objection to the production of them?”

“Answer. I leave it to the discretion of the court. Court replied, The court cannot direct the conduct of any of the parties. Dr. Kipling, (after a little pause) Am I to give a decisive answer? I see no reason why he should not: I am willing that he should.”

Vice-

Vice-Chancellor. " I see none. I believe I sent next day to Mr. Frend, that as soon as a regular accusation was formed, I would send them*. I called a meeting of the heads, and it was their opinion that I should not."

Commissary. " I will take Mr. Frend's objection fully. Mr. Lloyd is no accuser before the court, and therefore a competent witness."

Mr. Frend asked: " Mr. Vice-chancellor, is this with the concurrence of the heads?" Answer. " They do not object."

" Mr. Lloyd appeared with a pamphlet in his hand, and was sworn."

Question. What pamphlet is that which he holds in his hand?

" Mr. Frend observed, that this looked like concivance. It seemed as if the promoter had directed the witness to bring the book, that the promoter might ask him what it was."

Answer. A pamphlet intitled, Peace and Union : by William Frend, Fellow of Jesus College.

Q. Did he purchase it, or was it given him?

A. He purchased it.

Q. Of whom?

A. Of Mr. Lunn; the bookseller.

Q. Did he purchase it before the third of April, or after?

A. After that date.

Q. How long after that date?

A. On Thursday eighteenth of April.

* Mr. Frend never received the message.

E

Q. Can

Q. Can he say, on his oath, that is the very pamphlet he bought in Mr. Lunn's shop?

A. He can.

Q. Did he receive it from Mr. Lunn himself, or his foreman?

A. From his foreman.

Mr. FRENCH cross-examined the witness.

Q. Was there any agreement between the witness and the promoter to appear with a pamphlet?

A. He was asked by Dr. Kipling, if he had any objection to appear, and had none. "It was a voluntary act." The same principle which led him to petition for the prosecution, led him also to take the part which he now does in it. He had no objection to purchase a pamphlet for the express purpose of appearing against Mr. French, and to bring home the charge, "and convict him of publishing."

Q. Was there any agreement between witness and Dr. Kipling, concerning a regular plan of purchasing, "keeping, and exhibiting the pamphlet before this court?"

A. Dr. Kipling "certainly" suggested to him to take every proper method for identifying the pamphlet, and qualifying himself as a witness on this occasion.

Q. Whether he was one of the twenty-seven, or a greater or less number, who met at the vice-chancellor's, and entered into certain resolutions respecting this cause?

A. He has the honour of being of that number, and thanks Mr. French for making that known.

Q. Did he vote for Dr. Kipling being chairman on that occasion?

A. He did.

Q. Did

Q. Did he the witness debate on the mode of prosecution on that occasion?

A. The plan was not finally settled on that occasion: there certainly was a debate.

Q. By whose direction did the witness go to the house of Mr. vice-chancellor on that day?

A. He thinks it was in consequence of a message from the vice-chancellor, but is not very positive, and believes it was.

Q. Did witness vote for the five managers?

A. He does not think it came to a regular voting.

Q. Were they nominated?

A. There were names mentioned.

Q. Was there any question of depriving Mr. Frend of his property, at that meeting?

A. He rather thinks that it was hinted by some present, that a prosecution might go to that, but that it was not a necessary consequence; and the question was, Whether the college might not, on account of the university's prosecuting, proceed to exclude him from his fellowship? but he does not pretend to be accurate. "He cannot answer for his memory, as he did not come to answer this."

"Mr. Frend. Certainly: I suppose you came for a very different purpose."

Q. Was it not said, that to deprive Mr. Frend of his property, was a matter of comparatively small moment?

A. He does not recollect that remark.

"Mr. Lloyd gave in his copy, and the promoter desired that it might be identified to be a duplicate of that already in court."

Mr. Lutz called in again.

Question. Whether he recollects a pamphlet being fold to Mr. Lloyd, intituled, Peace and Union.

Answer. He does.

Q. Does he recollect whether it was fold to him after the third of April, or before?

A. He thinks after.

Q. from the court. How comes he to recollect selling that pamphlet to Mr. Lloyd?

A. By Mr. Lloyd's writing his name in it.

Q. Being shewn a pamphlet, and asked if that was the same.

A. It was like it, but he was not sure that it was the same, and that he has no circumstance fixed in his memory which will enable him to say, with certainty, that the pamphlet was really fold to Mr. Lloyd after the third of April; and did not remember that it was dated; and the pamphlet's being dated is the sole circumstance which leads him to suppose that it was fold then.

Mr. FrenD cross-examined the witness.

Q. Why he remembers the day when he said he came to Mr. FrenD's room?

A. Because he gave Mr. FrenD credit for twenty copies in Mr. Lunn's ledger.

Q. By whose instructions he took the memorandums he has in his hands?

A. Mr. Lunn directed him to take those memorandums.

Witness

“ HARVEY ALGER ” witness again examined by Dr.
KIPLING.

Q. Is he in possession of a copy of the pamphlet intitled, Peace and Union, by Mr. Frend.

A. Yes.

Q. Where did he purchase it?

A. Of Mr. Bowtell.

Q. About what time?

A. Friday nineteenth of April last.

Q. from Mr. Frend. Whether he bought a second copy by direction of Dr. Kipling?

A. He bought both books by direction of Dr. Kipling.

JOAN BOWTELL, sen. called and sworn.

Question. Does he recollect selling a copy of a pamphlet intitled, Peace and Union, by Mr. Frend, to Dr. Kipling's servant?

Answer. He does.

Q. From whom had he that pamphlet?

A. From Mr. Frend.

Q. Did he go to Mr. Frend's chambers for it?

A. No.

Q. Where then did Mr. Frend deliver it to the witness?

A. I received it from Mr. Frend in the witness's house.

Q. Did Mr. Frend bring it himself to the witness's house?

A. No.

Q. Who then brought it to his house?

A. It came to his house in a parcel directed to Mr. Frend.

Q. Does

Q. Does he know from whence that parcel came?

A. He does not.

Q. What did that parcel contain, besides that one copy sold to Dr. Kipling's servant?

A. It contained that pamphlet, and several other duplicates.

Q. How does he know that it contained several other duplicates of that pamphlet?

A. He saw them when the parcel was opened.

Q. Who opened that parcel?

A. Mr. Frend himself.

Q. How long had the parcel been in his house, before Mr. Frend came to open it?

A. He does not now recollect whether Mr. Frend came the same day on which he opened it, or not; but it was on the same day or the following day.

Q. Did Mr. Frend deliver that one copy aforesaid, with some others, to be sold for him?

A. He did.

Q. Did he give the witness any commission about the remaining copies?

A. He does not recollect that he did.

Q. Did he give no directions to send any copies to Mr. Merrill or Mr. Lunn?

A. He does not recollect that he gave the witness any.

Q. Did witness hear Mr. Frend give any directions to the witness's servant?

A. Mr. Frend did.

Q. To inform the court what those directions were?

A. Mr. Frend directed the witness's servant to take
one

one of the inclosed parcels to Mr. Merrill: another inclosed parcel was directed to be taken to Mr. Lunn.

Q. from the court. Were any of the parcels under cover?

A. They were tied up, and the titles together; the titles faced, so that no print was seen: the ends of the pamphlets were blank.

Q. How did he know that these pamphlets were copies of the pamphlet, intituled Peace and Union?

A. He does not know that they were pamphlets intituled Peace and Union.

Q. Does he know that the pamphlet, now produced by Dr. Kipling's servant, was the pamphlet sold by him?

A. He does not know that that was the pamphlet.

Mr. FRENCH cross-examined the witness.

Q. Whether he has not sold for Mr. French a variety of books of various authors, addressed to the witness or Mr. French, in parcels from London?

A. He has.

CHARLES DICKENS, LL. D. was called by the plaintiff, and sworn, and deposed as follows:

Question. Whether has he in his possession at present that pamphlet, intituled Peace and Union, &c. by William French, which was shewn to him by a friend of his about a week ago, and containing an appendix in two parts.

Answer. He has.

Q. To produce it in court.

A. He is ready to produce it. (He did produce it.)

Q. Of

Q. Of whom had he that pamphlet?

A. "From my old friend and acquaintance Mr. Frend. I saw him at a bookfeller's shop at St. Ive's: he was going to send out some of them. (Interrupted by the court.)" Of Mr. Frend.

Q. Did he make a present of it?

A. Mr. Frend said, that he designed to send him one, and took up that one which he has in his hands, "I said, no one shall see this till it become *publici juris*."

Q. How does he know that that is the very book he took up?

A. "*Hicce oculis video;*" and he knows it by his own hand-writing in it,
"*Sunt bona, sunt quædam mediocria, sunt mala plura,*" which I translate,

"Do you expect a perfect work to see?

"You ask what never was, nor is, nor e'er shall be."

Q. Dr. Dickens was desired by Mr. Frend to read what is written in the end of the pamphlet, in Dr. Dickens's own hand-writing. "The court was inclined to reject it; but on Dr. Kipling's desire it was read. *Trojani equi fabricator* was said to be *Epeus*. I don't know that, nobody knows."

A. He read, *Siste per fidem*, at the bottom of the stairs,

Nolo per Jovem, faith good Mr. Eyres,
Nil dictum quod non dictum sit prius.

ACTA CURIÆ.

At a Court, holden, &c. between the hours of twelve and six, on Saturday the eleventh of May, 1793, &c.

CERTAIN resolutions respecting this cause, by which Dr. Kipling, Dr. Jowett, Mr. Mansel, Mr. Mainwaring, and Mr. Belward, were appointed managers to carry on, 'in their names,'* this prosecution, were read.

Dr. Kipling desired that the two pamphlets, yesterday produced in court, the one by Harvey Alger, the other by Dr. Dickens, might be examined by the court, that the court might be satisfied that the same were duplicates, excepting an appendix annexed to the latter.

John Bowtell, jun. Philip Life, John Bowtell, sen. William Henry Lunn, Elizabeth Everden, John Merrill, Thomas Wagstaff, Thomas Watson, A. M. Edward Kilvington, A. M. John Plampin, A. M. and Thomas Newton, A. M. were sworn and examined, Mr. Frend having first protested against the evidence of Edward Kilvington, A. M. as having signed the resolutions aforesaid: and certain letters, or notes, marked A, B, and C, addressed to Mr. Watson, fellow of Sidney college, were read, and also answers to the same, marked a, b, and c.

The court was adjourned to Monday next, at ten o'clock.

"The vice-chancellor holding a paper in his hand, addressed Dr. Kipling; You consented that a copy of these resolutions should be given to Mr. Frend?"

Dr. Kipling answered. I did consent that Mr. Frend might have a sight of them.

* 'In their names,' was left out in the copy delivered to me; but it was read in this manner afterwards in the court of delegates.

The papers were then delivered to Dr. Kipling, who after looking at them and a short consultation with the other four managers, said, they contain nothing we are ashamed of; yet I am unwilling to gratify an impertinent curiosity.

The papers were then delivered into court and publicly read."

CAMBRIDGE, QUEEN'S COLLEGE, MARCH 4th, 1793.

RESOLVED by the under-written persons, members of the university of Cambridge, that William Frend, M. A. and fellow of Jesus college, be prosecuted in the vice-chancellor's court, for having publicly and notoriously offended against a grace, passed by the senate of this university in the year 1603; and that the following gentlemen be a committee to manage the said prosecution, viz. Dr. Kipling, Dr. Jowett, the Margaret professor of divinity, the public orator, and the reverend Mr. Belward, fellow of Caius college:

T. Kipling	Geo. Whitmore	A. Frampton
J. Jowett	W. Mathew	E. Kilvington
J. Mainwaring	E. Bradford	E. Outram
W. L. Mansel	J. Oldershaw	R. Tillard
R. Belward	W. Walford	W. Pugh
	W. Wade	W. Walker
	J. Plampin	F. J. H. Wollaston
	H. Jowett	Wm. Easton
	J. Smith	W. Wilson
	J. Costobadie	
	J. Wood	
	Tho. Salmon	
	H. Greene	
	G. King	
	T. Lloyd	
	R. Ramsden	

CAMBRIDGE, MARCH 11, 1793.

Agreed, that the following words in the resolution made last Monday, viz. 'against a grace passed by the senate of this university, in the year 1603,' be rescinded, and that in lieu of them be substituted these words, viz. 'against the laws of the university.'

T. Kipling	Geo. Whitmore	R. Ramsden
J. Jowett	Wm. Easton	A. Frampton
J. Mainwaring	Henry Jowett	E. Kilvington
W. L. Mansel	W. Mathew	W. Walker
R. Belward	W. Walford	W. Pugh
	E. Bradford	E. Outram
	J. Oldershaw	
	W. Wade	
	J. Costobadie	
	J. Smith	
	P. Douglas	
	J. Wood	
	The. Salmon	
	F. J. H. Wollaston	
	G. King	
	G. Gordon	
	W. Wilfon	
	H. Greene	
	T. Lloyd	

"Mr. Frend requested that they might be left with him during the sitting of the court, which Dr. Kipling objected to. Dr. Kipling then desired the vice-chancellor to compare Dr. Dickens's pamphlet with Alger's. Mr. Frend observed; it would save trouble if the promoter would say for what end Dr. Dickens was produced at all. Dr. Kipling replied; it will save no trouble, therefore I shall go on in my own way."

PHILIP LIFE sworn,

Q. Do you recollect ever receiving from John Bowtell, jun. a parcel containing fifty pamphlets, or thereabouts?

A. I do.

Q. Did you open that parcel yourself?

A. I cannot charge my memory whether Mr. Luna or I opened it.

Q. Did you see the parcel opened?

A. I saw it when it was open.

Q. What were the contents of it?

A. It contained fifty copies of a pamphlet intitled, Peace and Union recommended to the associated bodies of republicans and anti-republicans.

Q. Was there any persons name upon the title page?

A. Yes. Mr. Friend's.

Q. What might be the interval of time, or nearly so, between your receiving that parcel and seeing it opened?

A. I saw it opened the same evening it was brought.

Q. Are you sure that the parcel of pamphlets that you saw open was the very parcel that you received from John Bowtell?

A. I am sure.

Q. Did John Bowtell, jun. deliver any message to you along with that parcel?

A. He said it came from Mr. Friend's.

Q. Did he say for what purpose?

A. I do not recollect that he did.

Q. Have

Q. Have any of those pamphlets been sold in Mr. Lunn's shop?

A. Yes.

Q. How many?

A. The whole fifty.

Q. On what authority did you undertake to sell those books?

A. I cannot say, it was Mr. Lunn's order they should be put into the shop for sale.

Q. Have any more copies of the same pamphlet been sold in Mr. Lunn's shop?

A. Yes.

Q. How many more?

A. About seventy.

Q. Do you know where those seventy copies came from.

A. I went for fifty of them to Mr. Bowtell's house, and for the other twenty to Mr. Friend's rooms.

Q. Did you receive the fifty copies yourself from Mr. Bowtell?

A. I did.

Q. And what did you do with them?

A. Brought them home to Mr. Lunn's shop.

Q. Are all those fifty copies sold?

A. They are.

Q. Were they all sold before you went to Mr. Friend's chambers for more copies of the same book?

A. I believe they were, but cannot speak with any certainty.

“Dr.

“Dr. Kipling observed to the court, the other twenty, you will remember, were proved to have been brought from Mr. Friend’s rooms.”

Q. Do you know whether any more copies of the same pamphlet were brought into Mr. Lunn’s shop for sale?

A. I never saw any after the twenty copies I received from Mr. Friend.

Q. Do you then believe that no more than those hundred and twenty copies, which have been just mentioned, were ever exposed to sale in Mr. Lunn’s shop?

A. I do.

Q. (from Mr. Friend.) At what time the sale of these pamphlets began at Mr. Lunn’s?

A. Somewhere about February the thirteenth last.

JOHN BOWTELL, sen. sworn.

Q. Did you ever deliver fifty copies of the pamphlet intitled Peace and Union, &c. to Philip Life, Mr. Lunn’s foreman?

A. I do not recollect that I did.

Q. Do you recollect whether Philip Life ever came and asked you for some copies of that work?

A. No I do not remember that.

Q. Do you recollect ever giving any parcel of books to Philip Life, Mr. Lunn’s foreman?

A. I have no recollection of it.

Q. Did not Mr. Friend leave several copies of the pamphlet intitled Peace and Union, and so forth, in your house, to be distributed to others, who might ask for the work?

A. He did.

Q. Did

Q. Did you make an entry in your account books of the number of copies which he left you for that purpose?

A. I believe I did.

Q. Have you kept an account, in the same account books, of the persons names to whom you have delivered copies of that work, and of the number of copies that you have delivered to each person?

A. I have only the name of Mr. Friend.

“Dr. Kipling. He cannot understand the question, which was therefore repeated.”

A. I have no account of any person to whom I have sold them.

Q. You told the court, yesterday, that you saw Mr. Friend open a parcel which contained many pamphlets. You have also told the court that several of those pamphlets were left in your own possession. Have you kept no account of those pamphlets?

A. No I have not.

Q. Are they all in your own possession still?

A. None of them.

Q. Tell the court to what persons you recollect having delivered some of them.

A. I think I recollect sending fifty copies to Mr. Friend, unfold.

Q. Tell the court the names of all the persons to whom you have sent parcels of those pamphlets?

A. I sent none. I saw them go. Mr. Friend sent them.

Q. How many copies did you send to Mr. Lunn?

A. I sent none.

Q. Do you mean to deny, that Philip Life ever had fifty copies, from you, of the pamphlet intitled Peace and Union, &c. by Mr. Friend.

A. No.

Q. Do you think that he never had that number of copies of the pamphlet so intitled, from your house?

A. I might deliver them, but I do not recollect it.

Q. You have said, that you never sent any of those pamphlets yourself to Mr. Lunn's, but that you saw fifty of them go. By whom were they carried to Mr. Lunn's?

A. By my servant, John Bowtell, jun.

Q. Who directed him to carry them thither?

A. Mr. Friend.

Q. What message did Mr. Friend send along with them?

A. I do not recollect any particular message.

Q. Did he send no message?

A. He said, take them to Mr. Merrill, and Mr. Lunn, this is all I recollect.

WILLIAM HENRY LUNN sworn.

Q. Your foreman has told the court, that he received a parcel, containing fifty pamphlets, from John Bowtell, jun. that he does not recollect whether he or yourself opened that parcel; do you recollect by whom it was opened?

“ Mr. Friend asked the court, whether such prolegomena were allowable in questioning a witness? The commissary disapproved of them.”

A. I have no recollection of that circumstance at all.

Q. Do

Q. Do you recollect that a parcel containing fifty pamphlets, intituled Peace and Union, and so forth, by William Friend, was left in the month of last February at your house?

A. I have a perfect recollection of their being left, but cannot speak as to the time; but my ledger will prove it.

Q. Did you deliver them to your foreman for sale in the shop, or give him any directions for that purpose?

A. I do not recollect.

Q. By what authority then do you suppose they were sold in your shop?

A. As coming from Mr. Bowtell by Mr. Friend's order.

Q. Had you any more copies of the same pamphlet from Mr. Bowtell?

A. I sent for more when the first were sold.

Q. How many were brought?

A. Fifty.

Q. Had you sold the whole hundred copies which you say you received from Mr. Bowtell, before the third of April?

A. I cannot say.

Q. Had you sold them all when you sent for some more copies from Mr. Friend?

A. I think they were all sold. I will not say positively.

Q. What more copies of the same work have you ever received for sale?

A. Twenty copies.

Q. From whom did you receive those twenty copies?

A. I received them by my agent, in consequence of a message I sent to Mr. Friend.

Q. Had you ever any copies of the same pamphlet for sale, in your shop, besides the hundred copies you had from Mr. Bowtell, and the twenty copies you had by your journeyman "from Mr. Friend's chambers?"

These latter words were withdrawn by direction of the commissary."

A. No.

Q. Do you believe that those hundred and twenty copies are the only ones that were ever brought into your shop for sale, and that you have sold no others?

A. I do.

ELIZABETH EVERS DEN SWORN,

Q. "Do you remember seeing that boy? (pointing to Bowtell, jun. who had been detained at the bar.)"

Q. Do you remember ever seeing John Bowtell, jun.

A. I do not.

Q. Do you recollect receiving a parcel of books or pamphlets from a person of about that size?

A. Yes.

Q. To whom did you deliver that parcel?

A. To my master, Mr. Merrill.

Q. Did you see that parcel opened?

A. No.

Q. Did the person, of whom you received that parcel, deliver any message with it?

A. He told me they were pamphlets to be sold for Mr. Friend.

Q. Did

Q. Did he tell you from whence they came?

A. No.

Q. Do you recollect about what time you received that parcel?

A. No.

Q. Can you tell how long ago?

A. She cannot say.

JOHN BOWTELL, jun. again examined.

Q. Do you recollect delivering a parcel of pamphlets which you received from Mr. Frend, to Elizabeth Everfden, Mr. Merrill's servant?

A. Yes.

Q. Do you now recollect her person?

A. Cannot tell.

“ Mr. Frend observed, if Dr. Kipling has any question in future to determine personal identity, I must desire that he be not permitted to point out the person to the witnesses, but that they be left to discover it; as I believe is usual in all other courts.”

JOHN MERRILL sworn.

Q. Do you recollect receiving from your maid servant a parcel containing fifty pamphlets, intitled Peace and Union, and so forth, by W. Frend, with a message purporting that they were to be sold for Mr. Frend?

A. Yes,

“ Q. Were those pamphlets when you received them, put up so that the title pages could not be seen?

To this question Mr. Frend made objections, which the commissary allowed,”

Q. How

Q. How were those pamphlets put up?

A. I cannot recollect they were put up in any particular order.

Q. Were the title pages visible.

A. I do not remember they were visible, they had titles.

Q. Did you open the parcel yourself?

A. Yes.

Q. What were the titles of those pamphlets?

A. Peace and Union, by William Friend, &c.

Q. Have you fold any of those pamphlets?

A. Yes.

Q. Do you recollect whether, at the time you received them, each pamphlet had an appendix to it?

A. Yes they had.

Q. Did you sell any copies with the appendix to it?

A. Yes.

Q. Have you since that fold any without the appendix?

A. Yes.

Q. By whose authority was the appendix cancelled?

“Objected to by Mr. Friend; but ordered as asked for no purpose but to prove the pamphlet, with the appendix, written by Mr. Friend.”

A. By Mr. Friend's.

Q. Did Mr. Friend authorise you, in person, to cancel the appendix?

A. Yes.

Q. Did

Q. Did he direct you, in person, to sell the pamphlet without an appendix?

A. I do not recollect that he did.

Q. Did he give you no directions whatever, in person, about the sale of those pamphlets?

A. I do not remember that he did.

Q. "To whom do you intend to pay the money you have received, or may receive, for the sale of this book?"

Mr. Friend objected to this question; the commissary thought it not improper; however it was changed."

Q. To whom have you given credit in your books for the money you have received for the copies of the pamphlets that are sold?

A. To Mr. Friend.

Q. Did you send a copy of the said pamphlet to the Master of Arts coffee-house?

A. I did.

Q. Do you recollect by whom you sent it?

A. I do not.

Q. from the court. At what time did you receive this parcel from your servant?

A. February the thirteenth last, as appears by entry in my books.

THOMAS WAGSTAFF SWORN.

A book was delivered to him.

Q. What is the title of the book in your hand?

A. Peace and Union recommended to the associated bodies, &c.

Q. Did

Q. Did you ever see that book before that is now in your hands?

A. Yes.

Q. Where did you see it?

A. At the Master of Arts Coffee-room.

Q. Who keeps that coffee-room?

A. I do.

Q. From whence did that book come?

A. From Mr. Merrill's.

Q. Look at the second leaf; whose hand writing is that?

A. It is mine.

Q. What is written on the leaf?

A. Master of Arts Coffee-room.

Q. (from Mr. Frennd.) Who has a right to take books out of the Master of Arts Coffee-room?

A. Any member belonging to the society.

Q. Is Dr. Kipling a member of that society.

A. No.

Q. Do you know then how the book came into Dr. Kipling's possession?

A. No.

Q. Do you know then who took it out of the coffee-room?

A. Mr. Frampton of St. John's.

Q. How long has it been taken out of the coffee-room?

A. On the sixth of May.

Q. Are

Q. Are there any limitations respecting the time of taking books out of the coffee-room?

A. Seven days.

Q. "I mean" how long is a book to be in the coffee-room before it may be taken out?

A. Two months.

Q. When did you receive this book?

A. On the fifteenth of February.

"Dr. Kipling observed to the court; this book, you observe, has an appendix."

Q. (from the court.) How did you know the book came from Mr. Merrill?

A. "I suppose so, as all books are sent in from Mr. Merrill. This was answered again."

A. Because it was numbered when it came in, which is the common case with books that come from Mr. Merrill.

"(Mr. Friend.) Do you not receive into the coffee-room some as presents?"

A. I do.

This evidence occasioned some delay, and Mr. Merrill was called again."

Mr. MERRILL called again.

Q. from the court. Do you remember numbering that book (showing him a book from the Master of Arts coffee-house)?

A. No, "'tis not my number," but I believe it to be the numbering of my young man.

THOMAS WATSON, A. M. sworn.

Q. Were you not curate of Fenstanton in February or March last.

A. I was.

Q. Did you not during that interval make some inquiries respecting the price of spinning wool?

A. I did.

“Vice-chancellor. What! what! spinning wool! what has that to do with this business. Dr. Kipling went up to the vice-chancellor and said something in a low voice to him: who said, ay, ay, go on.”

Q. Did you not during that interval make some inquiries respecting the price of spinning wool?

A. I did.

Q. What led you to that inquiry?

A. The perusal of part of a book which I had read in the Master of Arts Coffee-room.

Q. What book? what was the title of it?

A. I do not recollect the precise title, but I have reason to believe that the beginning of the title was Peace and Union.

Q. Is any persons name mentioned in the title-page?

A. I believe W. Friend, A. M. fellow of Jesus college.

Q. Did you find what is stated in that book respecting the price of spinning to be agreeable to the information you received from the inhabitants of Fenstanton?

A. I had reason to believe that the information I received at Fenstanton on that subject was different from the information I received from that book on that subject.

Q. Did you mention that seeming misrepresentation to any of your acquaintances at that time?

A. I did, whenever inquiry was made to me on that subject.

“Vice-

“Vice-chancellor. What is all this to prove?”

Dr. Kipling. That Mr. Friend is the author.”

Q. Have you reason to think that Mr. Friend ever heard that you thought what is said in the above-mentioned pamphlet about spinning, is not true?

A. I have reason to conceive so.

Q. Mention that reason to the court.

A. I did receive notes or letters, as I presumed coming from Mr. Friend, in one of which I was desired not in future to assert that the subject on which I had been questioned in various companies, was a misrepresentation.

Q. Is that note in your possession?

A. It is.

Q. Have you it in court?

A. Yes.

Q. Please to produce it.

It was produced.

Dr. Kipling. I desire that the first note may be read.

“Mr. Watson. I cannot swear that the note was written by Mr. Friend.”

EDWARD KILVINGTON, A. M. sworn.

“Mr. Friend objected to the oath being given to Mr. Kilvington, as one of the twenty-seven. The court answered; this objection was over-ruled yesterday in Mr. Lloyd’s case.”

Q. (putting a note into his hands). Whose hand writing is that?

A. It is Mr. Friend’s.

Q. Have you frequently seen Mr. Friend write before?

A. Yes, frequently.

Q. (from Mr. Friend). Do you know it to be Mr. Friend's hand-writing?

A. I do.

Q. How came you to know it to be Mr. Friend's hand-writing?

A. By having very frequently seen him write, and from having letters of his now in my possession.

Q. Did you write any letters to Mr. Friend ever?

A. I believe I have.

Q. Where did you see Mr. Friend write?

A. In his own room when giving lectures, for three years or thereabout.

Q. How long since have you seen Mr. Friend write?

A. About six or seven years since, I saw him write, certainly not more,

Q. How then can you say that this is Mr. Friend's hand-writing that bears so late a date?

A. I have reasons, but on Mr. Friend's account I am unwilling to give them.

Q. Mr. Friend begs the witness may be desired to give them?

“ A. Mr. Friend's studied attentions---

Here a short delay and consultation in the court, after which the commissary asked Mr. Friend, do you wish him to produce additional reasons?

Mr. Friend. Undoubtedly.

Mr. Kilvington resumed;”

A. Mr. Friend's studied attentions shewn to me, as I believe they were shewn to all those whom he was desirous of profelyting to his own opinions, were such, as to have impressed very deeply upon my mind the recollection

lection not only of his hand-writing, but of a thousand other circumstances much more minute: added to this, I have occasionally seen his hand writing since the time which I formerly alluded to.

Q. How long since?

A. Very lately.

Q. How lately, how far back?

A. Within a month.

Q. On what occasion?

A. In the order book at the Master of Arts Coffee-house.

“The vice-chancellor and commissary here observed, that this added no new strength.”

“Mr. Kilvington. I was unwilling to speak more strongly.” And further believes that he has seen Mr. Friend write within these two or three years, “in his own room.”

Q. Did he read the writings which he has seen Mr. Friend write within these two or three years?

A. I have seen the direction of letters which I have seen Mr. Friend write.

Q. At what time precisely?

A. I cannot say: but I believe within three years.

Q. Is it within these two years?

A. I cannot say precisely: I believe not.

“Mr. Friend. He seems to say that he is well acquainted with hand-writing. I wish he may be asked whether he knows this hand-writing? (throwing down some papers).”

“The vice-chancellor thought they might be read; the commissary thought not.”

JOHN

JOHN PLAMPIN, A. M. SWORN.

“ Mr. Frend objecting to Mr. Plampin’s evidence, said, he was one of the twenty-seven, and also one of those who had already sat in judgement on this matter in my own college, and condemned me on this very question without hearing any thing in my defence.”

“ The court observed, the objection had been over-ruled.”

“ Mr. Frend said, here is additional ground.”

“ A note was put into his hand.”

Q. Whose hand-writing do you believe that note to be?

A. I believe it to be Mr. Frend’s.

Q. (from the court.) Have you seen Mr. Frend write frequently and lately?

A. I have within six weeks.

Q. (from Mr. Frend.) Whether any of your pupils have an opportunity of knowing your hand-writing at lectures?

A. Certainly not, because it is not my duty to write in their presence.

“ Does Mr. Plampin give any lectures in college?”

“ Over-ruled.”

“ Dr. Kipling desired that a copy of the note might be given to him and the managers, which was agreed to, and Mr. Frend now desired that a copy of their resolutions might be delivered to him in exchange. This also was allowed.”

THOMAS NEWTON, A.M. sworn.

“A note was put into his hand.”

Q. Whose hand-writing do you think that is?

A. I believe it to be Mr. Frennd's, but I cannot say positively.

Q. (from the court.) Have you seen Mr. Frennd write frequently, and how lately?

A. I believe I have seen him write within a year or two, but not frequently.

“The note was read.”

To the Rev. Mr. Watson, fellow of Sidney coll.

Mr. Frennd having been informed that Mr. Watson has studiously endeavoured in various companies to make it appear that his account of the fall in the price of spinning was a misrepresentation, takes this opportunity of acquainting him, that Mr. Frennd gained his knowledge of this circumstance from three sources; from the poor employed in spinning; from the persons employed by the wool-dealers to deliver out wool to the poor; and from the printed papers sent round by the wool-dealers. He asserts as a fact from these informations, that the poor person, who gained a shilling the week before the printed paper Mr. F. alludes to, was sent round, did the week after for the same quantity of work gain only nine pence. Mr. Audley, a wool-dealer in this town, is willing to corroborate this account, and will, Mr. Frennd doubts not, give Mr. Watson any further information on this subject, which may not only make Mr. Watson's ideas clearer, but prevent him from mis-stating in future a matter of fact.

Jes. coll. Mar. 4, 1793.

Mr.

Mr. WATSON'S evidence resumed.

Q. Has that note ever been out of your possession?

A. It has.

Q. How do you know that the very same note you lent was returned to you?

A. By my own hand writing, which is on one side of it.

Q. When was that written?

A. Before it ever went out of my possession.

Q. Did you return any answer to that note?

A. I did.

Q. Be pleased to produce that answer before the court?

A. The witness delivered in the answer, which he said he could not swear was a literal or verbatim copy of the answer he sent, but that it contained the meaning and substance of it, and was written soon after the other.

To Mr. Friend, Jef. Coll.

Mr. Watson has received a note from Mr. Friend, in answer to which he declares that whenever the oppression of the poor of Fenstanton has been the subject of conversation in consequence of Mr. Friend's appendix, that he asserted, that he wished to believe that Mr. Friend thro' ignorance had misrepresented the fact, his reason for this assertion was founded upon information he received at Fenstanton. Mr. Watson is still of the same opinion. As to being studiously earnest in contradicting or supporting Mr. F's publication Mr. W. denies the fact.

Thursday noon.

Q. Did you receive any reply to the aforesaid answer?

A. I did.

Q. Be

Q. Be pleased to produce that reply before the court, marked B?

The reply was produced and read.

Mr. KILVINGTON recalled.

A note marked B was shewn to Mr. Kilvington.

Q. Do you believe that the note marked B is the hand-writing of Mr. Frend?

A. I do.

Mr. PLAMPIN recalled.

The note marked B was put into his hand.

Q. Do you believe that note marked B is the hand-writing of Mr. Frend?

A. I do.

Mr. NEWTON recalled.

The note marked B was put into his hand.

Q. Do you believe that the note marked B is the hand-writing of Mr. Frend?

A. I believe it is.

To the Rev. Mr. Watson, Fellow of Sidney Coll.

Mr. Frend requests the favour of Mr. Watson to omit in future his remark on Mr. F's account of the fall of spinning, namely, that he wished to believe that Mr. Frend thro' ignorance had misrepresented the fact, as Mr. Frend takes upon himself to assure Mr. Watson that the fact is not at all misrepresented. Mr. Frend has informed Mr. Watson from what sources he derived his information, and takes the liberty of observing that Mr. Watson is not probably aware that the printed bills al-

luded to are formed at meetings for a large district, and that those, which Mr. Frennd saw, did not relate only to the spinners of Stanton, but extended over Huntingdonshire, parts of Northamptonshire and Bedfordshire.

In consequence of Mr. Watson's note Mr. Frennd called this evening on Mr. Audley who has given him a printed paper just made for Cambridgeshire, parts of Hertfordshire, Bedfordshire, and Huntingdonshire, and shewn him letters from Yorkshire and other parts informing him of the progress in the lowering of the price of spinning. At a meeting this week in Suffolk, spinning was lowered again 2d. per pound, from 9d. to 7d.

Now if, in contradiction to Mr. Audley and a variety of dealers whom Mr. Audley is willing to name to Mr. Watson, besides giving him every other information on this subject, Mr. Watson still persists in declaring that the price of spinning, which was one week at a shilling, and reduced according to Mr. Frennd's account to 9d. the week after, was not in this manner reduced, Mr. F. can only request that he would point out to him from what sources he has derived an information, which the principal dealer in wool of this place declares not to be true, which Mr. Frennd knows also not to be true from the actual inspection of the printed papers, which regulate these proceedings.

Mr. Frennd did not in his former note refer to his publication at large, but simply to the fact of the fall of the value of spinning; he did not say that Mr. Watson was studiously earnest in contradicting or supporting Mr. F's. publication, but solely that he has studiously endeavoured, in various companies, to make the account of the fall in spinning appear a misrepresentation.

Jes. Coll. Mar. 14, 1793.

Mr. WATSON's evidence resumed.

Q. Produce your answer to the note marked B?

The

The answer was produced and read, and declared by the witness to be written under the same circumstances as the other.

To Mr. Frend, Jef. Coll.

Sir,

I was sensible from the inquiry that I made that the price of spinning was at the time mentioned in your pamphlet lower than the common current price, and that the value of a shilling's worth of labour was only paid by 9d.

You may probably be better skilled in the mysteries of woollen manufacturies than I can pretend to be; my trifling knowledge of this trade does not attempt to account for the reason of paying what is term'd a shilling's worth of labour with 9d. or 10d. but I believe it to be a notorious fact, that in proportion to the fluctuating value of the manufactur'd commodity, the price of spinning a certain quantity of wool, has varied in different degrees downwards from one shilling, which may be considered as the maximum; and that this did not commence at the period you mention, for previous to that the price of woollen goods had not been at the highest, and therefore a full shilling was not paid for the labour of spinning that certain quantity. This information I received from some of the most respectable inhabitants of each of my parishes, and to the best of my recollection it is the substance of what I have said, when I have conceived your assertion (however well meant) hastily adopted, that before the commencement of the present war one shilling was the current price, and that it immediately fell 3d. I again repeat that I did not think myself interested about any part of your pamphlet as to be studiously earnest in having it discussed in various companies.

I am, Sir, your humble fervant,

Sid. Mar. 15, 1793.

Jos. WATSON.

Q. Did you receive an answer to the note you have now read?

A. I did.

Mr. KILVINGTON recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Frend?

A. I do.

Mr. Plampin recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Frend?

A. I believe it is.

Mr. NEWTON recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Frend?

A. I believe it is.

Mr. WATSON's evidence resumed.

Q. Were the two last notes produced by you, marked with the marks B and C, marked before you ever parted with them?

A. They were.

Note C was read.

To the Rev. Mr. Watson, Fellow of Sidney Coll.

Mr. Frend did not write to Mr. Watson to enter into any controversy on the mysteries of woollen manufacturies, which, like the pretended mysteries of religion, are only such to those who do not give themselves the trouble of gaining knowledge from the proper sources. It is of a misrepresentation of a matter of fact to the injury of Mr. Frend's character that he complains, and, however
light

light the subject may appear in Mr. Watson's eyes, as long as truth is violated, it becomes Mr. Watson to acquire just information, and, having done that, either to convict Mr. Friend of a falsehood or to retract his former assertions. Mr. Friend declares that, at the time mentioned in the appendix to his pamphlet, spinning was at ninepence, the week before it was at par or a shilling. Mr. Watson denies this, and is referred by Mr. Friend to Mr. Audley, the principal wool-dealer in this place, or to any wool-dealer in Huntingdonshire. It appears strange that Mr. Watson should delay to call on Mr. Audley, from whom he will gain more information on this subject than from the most respectable inhabitants of his parish, who are not immediately concerned in letting out spinning to the poor.

Jef. Coll. Mar. 15, 1793.

Q. Did you answer the third note marked C?

A. I did.

Q. Did you send that answer of your's to Mr. Friend?

A. I did.

Mr. Watson's answer to note C was read.

To Mr. Friend, Jef. Coll.

Sir,

You assert that I deny what you positively affirm I do not. The information I received upon the subject seemed to me inconsistent with your publication. I repeat to you that I am not conversant in the knowledge of or practices observed in woollen manufactories. I cannot from myself presume to contradict what you from your professed extensive investigation of the subject positively affirm. I will endeavour to recollect (if the matter can be deemed worthy of recollection) that the idea, which I had formed from the information of my parishioners has been unequivocally contradicted by you.

you, I have before said, that I wish'd to believe that thro' ignorance you had misrepresented a matter of fact. You cannot think, that I have injured your character by supposing you liable to error, but I affirm that it will be a violation of truth if you maintain, that I have studiously endeavoured in various companies to accuse you of wilful misrepresentation. I beg leave to decline any future correspondence with you upon the subject of the fall of the price of spinning at Fenstanton. I would wish to appear to possess the sentiments of that person or those persons, who humanely and studiously endeavoured to deliver your pamphlet from the incumbrances of its appendices, by tearing them from the copies, that at a certain period remained with the booksellers. I would not wish that by any endeavours of mine, even the remembrance of them should be attached to the pamphlet from which they were studiously separated. The intention of that separation was doubtless, that they might be consigned to oblivion, that peaceful receptacle, where enthusiastic rhapsodies and chimerical theories, having lost their novel eccentricity, repose undisturbed, being secured by their own intrinsic insignificance*.

I am, Sir, your humble servant,

Jos. WATSON.

Q. By whom did you send that answer to Mr. Friend?

A. By my bed-maker John Smith,

Q. Whether John Smith brought any answer?

A. He did.

Q. Have you any particular reason for thinking that the notes A. B and C, came from Mr. Friend of Jesus college?

A. I have.

Q. Please

* The letters of Mr. Watson and Mr. Friend are given here, the former from the originals, the latter from copies in Mr. Friend's possession,

Q. Please to give that reason to the court?

A. The first time I met Mr. Friend in public after the receipt of the third note, he used to me the words; Our correspondence has ceased.

Q. Had you any other correspondence with Mr. Friend, in writing, since Christmas.

A. Not to the best of my recollection.

Q. Is there any other reason you would produce to the court?—**A.** No.

Q. (from Mr. Friend). Whether you have not reason to believe that the information you received from Fentanton was not true?

A. At the time I received the information I thought it true, and was satisfied with what Mr. Friend had shewn me.

Q. What did Mr. Friend shew you?

A. Some papers which Mr. Friend shewed me since the correspondence.

Q. What did those papers relate to?

A. I do not exactly know.

Q. Were they certificates?

A. I believe one might have the form of a certificate, do not positively know what they might be.

Q. Were they all written papers?

A. I believe not.

Q. Have you any recollection of what the printed papers related to?

A. I remember seeing one printed paper particularly.

Q. To relate what that printed paper contained as to your recollection?

A. I believe it contained a scale of the prices of wool spinning, but I cannot swear that it did.

ACTA CURIÆ.

At a Court, holden, &c. between the hours of ten and two,
on Monday the thirteenth day of May, &c.

FRANCIS HODSON was sworn and examined. Also Edward Kilvington, A. M. John Plampin, A. M. Thomas Newton, A. M. John Merrill, John Bowtell, sen. John Bowtell, jun. and Harvey Alger, were examined. And John Smith, and William Mathew, Fellow of Jesus College, and LL. B. were sworn and examined.

Dr. Kipling read the third article, and page 29 of the pamphlet, entitled, 'Peace and Union,' beginning from the words 'The liturgy,' &c. to words, 'such compositions,' and referred the said article to the judgment of the court.

Dr. Kipling then read the fourth article, and from pages 36, 37, and 38, beginning from the words, 'the same passions,' and ending at the words, 'episcopal conventions,' in the said pamphlet, and remarked upon the same.

Dr. Kipling then read the fifth article; and read from the 39th page of the said pamphlet, beginning from the words, 'the christian world,' to the words, 'spirit of Christianity;' and adduced the case of Charke, fellow of Peterhouse, 1572.

Dr. Kipling then read the sixth article, and read from the said pamphlet, from pages 39 to 40, beginning at the words, 'the laity, like' to the words, 'with his cloaths,' and submitted the article to the judgment of the court.

Dr.

Dr. Kipling then read the seventh article.

Dr. Kipling read the eight article, and read part of the statute, 'de concionibus,' from the words, 'prohibemus,' &c. to the end, and the grace 1603, page 365.

Dr. Kipling then read the ninth article.

And the court was adjourned to Friday the 17th inst. at ten o'clock in the morning.

FRANCIS HODSON sworn.

The Cambridge Chronicle and Journal was put into his hand, dated February the ninth, one thousand seven hundred and ninety-three.

Q. Are you the printer of this newspaper?

A. Yes.

Q. Read the advertisement in the third page, third column, the ninth from the top?

A. Read the same to the court; This day, &c.

Q. By what authority did you enter that advertisement?

A. A gentleman of the university brought it to me in writing, on the sixth of February, and desired me to insert it; and did pay me for the insertion.

Q. Was it Mr. Frennd himself?

A. No.

Q. Do you know who the gentleman was?

A. It was the Reverend Herbert Marsh, fellow of St. John's college.

"Dr. Kipling observed to the court: Mr. Marsh is so much indisposed, as not to be able to attend till sent for into court."

Q. Have you the writing which Mr. Marsh left with you?

A. Yes.

Q. Produce that note to the court? the same was read.

“ Dr. Kipling. I shall not prove the hand-writing of this note, till another note is produced.

“ The note was directed to the Reverend Herbert Marsh.

“ Mr. Hodson observed, the direction had nothing to do with the advertisement. The advertisement then was read. Mr. Hodson observed, that it was preserved as his authority for inserting it. Mr. Marsh, who had been sent for, now appeared, and addressed the court in these words: *

“ Mr. vice-chancellor,

“ Is it absolutely necessary that my evidence should be taken? You'll consider, Sir, that Mr. Friend is a near relation—a man with whom I have been educated from my childhood, and, of course, a confidential friend. I think it hard,—you yourself, Sir, with every assessor on the bench, would think it hard,—nay, even the prosecutors themselves, if it was their own case, would think it hard, extremely hard, to be dragged forward in this publick manner, to act against a man with whom they were connected by the bonds of friendship, and united by the ties of blood. I request, sir, the opinion of the court. The vice-chancellor, with the commissary and heads, then retired, and in about a minute the vice-chancellor returned, and made the following answer: Mr. Marsh, the court has taken your case into consideration; and is of

* Before this, Mr. Marsh had frequently expostulated with the promoter on the cruelty of forcing him to attend, and, failing of success, had addressed him in writing.

opinion,

opinion, that you ought not to be examined, unless Dr. Kipling particularly insists upon it. To which Dr. Kipling replied, that he only wished to ask Mr. Marsh a few questions, for form's sake, relative to the letter. The commissary then addressed Dr. Kipling to the following purport:—Dr. Kipling, you have heard Mr. Marsh's reasons: the court is satisfied with them; and, I think, therefore, you will not insist on his being examined. Dr. Kipling, with some reluctance, then gave up the point: and Mr. Marsh retired."

Q. The Cambridge Chronicle and Journal, dated 16th February, was then put into the witness's hands.—Are you the printer of that newspaper?

A. Yes.

Q. Read the advertisement, the first of the third column, third page?

A. The same was read: This day, &c.

Q. By whose order did you insert that advertisement?

A. By Mr. Frend's own order personally.

Q. Mention to the court what passed between you and Mr. Frend relative to that order?

A. I cannot recollect the exact words: but Mr. Frend desired me to repeat his advertisement in the next paper, and to say, 'This day is published.'

"Dr. Kipling. Did he not make use of these words, My pamphlet. This question was disallowed by the court as unfair."

Q. Did he make use of any other words?

A. Not to his recollection.

Q. Did you receive a note from Mr. Frend soon after that conversation?

A. I received a note in the name of Mr. Frend, saying,

that he had omitted to desire me to add the price of one shilling.

Q. Produce that note before the court?

A. The same was produced and read.

Q. "Whose hand-writing do you think it is? Agreed by many voices in the court, that this was not a proper question."

Q. Have you ever seen Mr. Friend write?

A. Yes, "often; but not this note. Without that I cannot swear to this."

Q. Do you think those notes were written by Mr. Friend?

A. I am of opinion they were; but I would not be supposed to speak positively. "Vice-chancellor asks, What are your reasons for thinking it Mr. Friend's?" The reasons are, that the respect I have for Mr. Friend as a gentleman of literature, and a member of this university, would not have permitted me to insert an advertisement to which his name was annexed, unless I supposed I had his own authority for doing it.

EDWARD KILVINGTON, A. M. sworn.

"Dr. Kipling. I refer to the former testimony given by Mr. Kilvington, and shall not put the previous question again, Whether he has seen Mr. Friend write."

Q. (Notes marked A. and B. were put into his hand.) Whose hand-writing do you believe that to be in the note marked A.?

A. Mr. Friend's.

Q. And in the note marked B.?

A. Mr. Friend's also. "Mr. Friend seemed to object to my former evidence, and asked, Whether I had seen his writing within two years? I was then unprepared."

Q. "By

Q. "By Mr. Frend." Does Mr. Kilvington recollect that he has seen Mr. Frend write within these two years?

A. I am now, upon recollection, prepared to say that I have.

Q. Have you read any of Mr. Frend's hand-writing within these two last years, that you have seen him write within these two last years?

A. I have.

JOHN PLAMPIN, A. M. sworn.

Q. Look on the note marked A. Whose hand-writing do you believe that to be?

A. I believe it to be Mr. Frend's; though I am not so certain of it as of the others.

Q. Look at the note marked B. Whose hand-writing do you believe it to be?

A. The same answer as to the former question.

THOMAS NEWTON, A. M. sworn.

Q. Look at the note marked A. Whose hand-writing do you believe that to be?

A. I cannot speak positively, but I believe it to be Mr. Frend's.

Q. Look at the note marked B. Whose hand-writing do you believe that to be?

A. I return the same answer as before.

JOHN MERRILL, sworn.

Q. Have you, "or any one for you, objected to by the court," ever received into your house, any one copy of the pamphlet, entitled 'Peace and Union,' and so forth, by William Frend, besides those fifty copies which
you

you mentioned in your former evidence to have been brought to your house from Mr. Bowtell's, on or about the fifteenth of last February?

“ Mr. Frend interposed, and begged that Dr. Kipling might be confined to simple questions, without any prolegomena, till he acquires the talent of writing prolegomena better.”

A. I never received any more than that parcel which I received on the thirteenth of last February.

Q. “ Did you ever sell a book, called A second address to the inhabitants of Cambridge, published 1789. Dr. Kipling produced a book.

Court asks, Do you think it material to prove the publication of Peace and Union?

Dr. Kipling. No. I want to explain some passages in the present publication by it.

Mr. Frend rose and asked: Are my supposed opinions in 1793, to be explained by a book, supposed also to have been written by me in 1789?

The court rejected the book as inadmissible in evidence.”

JOHN BOWTELL, sen. sworn.

Q. Have you ever had in your house, either as presents or for sale, any copies of the pamphlet, entitled, Peace and Union, &c. by William Frend, that were not contained in the parcel that you formerly told the court was opened by Mr. Frend at your house, and in your presence?

A. Not one that I have seen.

Q. Do you not think you would have seen them had there been such?

A. Yes, I think I certainly should, had I been in the way.

Q. Did

Q. Did you ever hear of any such coming into your house, that were not contained in that parcel?

A. Yes.

Q. Do you know from whence they came?

A. No.

Q. Do you know who brought them into your house?

A. No.

Q. Who told you about them?

A. My nephew, John Bowtell.

Q. Have you fold any of those copies?

A. No.

Q. Are they still in your possession?

A. No.

Q. To whom have you delivered them, or caused to be delivered?

A. I neither delivered them to any body, nor caused them to be delivered.

JOHN BOWTELL, jun. sworn.

Q. Have any copies of the pamphlet, entitled, Peace and Union, &c. by William Frend, been brought into your master's house, besides all those copies of the same pamphlet which were taken out of a parcel opened by Mr. Frend, in your master's house and presence?

A. I brought some in myself.

Q. Do you recollect how many you brought in?

A. No.

Q. From whom did you receive those copies?

A. I fetched them from the inn where the carrier sets up at.

Q. What

Q. What carrier?

A. The St. Ives.

Q. To whom were they directed?

A. They were directed to our house, and I think for Mr. Frend.

Q. Who ordered you to go to the carrier's for them?

A. Mr. Frend.

Q. What did you do with those copies?

A. Mr. Frend desired me to unpack them.

Q. Where were you when Mr. Frend desired you to unpack them?

A. In our own house.

Q. Do you know what became of them afterwards?

A. They were sent to London.

Q. Did you take them to the London carrier yourself?

A. Yes.

Q. (from the court.) How do you know they were copies of that pamphlet?

A. I saw some of them untied, and saw the title pages.

Q. When?

A. About the sixteenth or seventeenth of February, on a Thursday night, and they were sent to London the same night.

Q. "(from Mr. Frend)" Do you remember seeing Mr. Frend before at your house, packing up or unpacking parcels?

A. I have seen Mr. Frend one or two days before in our house unpacking a parcel.

Q. Within these three or four years last, have you
seen

seen him frequently unpacking parcels, or causing them to be packed?

A. I do not remember that I have.

JOHN BOWTELL, sen. again examined.

Q. Have any copies of the pamphlet, intituled, Peace and Union, &c. by William Frend, been sold in your house, which were not taken out of the parcel which you saw Mr. Frend open, to your knowledge?

A. No others have been sold but what came out of that first parcel that I know of.

Q. Have any copies of said pamphlet been sent from your house to Mr. Merrill's, or Mr. Lunn's for sale, which were not taken out of the same parcel?

A. That I cannot tell, I do not know of any.

“ Mr. Frend here asked, Whether it was usual and regular to call and recall evidence in this manner?

The commissary said, he wished that it could be avoided.”

Q. Have you ever sold any copies of said pamphlet, with the appendix annexed?

“ Mr. Frend objected to this question, but the objection was over-ruled.”

A. I do not recollect that I have sold one with the appendix annexed.

Q. Was that appendix torn from any copies of the pamphlet at your house?

A. Yes—it was cancelled.

Q. Who cancelled the appendix?

A. I did.

Q. By whose order?

A. Mr. Frend's.

Q. To whom have you given credit in your books for the money you have received for copies of the pamphlet that are sold?

A. Mr. Frend.

Q. (from Mr. Frend.) Do you recollect several parcels of books, of various authors, in the course of four years, or five years, being packed or unpacked by my orders at your house?

A. I do.

HARVEY ALGER SWORN.

Question. Of the two copies of the pamphlet intitled 'Peace and Union, &c. by William Frend,' which you purchased by my order at Mr. Lunn's or Mr. Bowtell's, did you deliver both into my hands on the first court day, or one only?

A. Only one.

Q. Which of them was it, that which you purchased at Mr. Lunn's, or that which you purchased at Mr. Bowtell's?

A. That which I purchased at Mr. Lunn's.

Q. How do you know it was that pamphlet in particular?

A. By having marked it with an L.

Q. Did you see me take the very same pamphlet from the table in the court on that day?

A. Yes.

Q. How do you know it to be the very same pamphlet?

A. By the marks which were on it.

Q. At

Q. At what time did I take it from the table?

A. At the time the court broke up.

Q. To whom did I deliver it?

A. To me.

Q. When and where?

A. At the table, at the time the court broke up.

“ Dr. Kipling now observed, that the evidence having been given in court at different times, and in a detached way, he must beg for time to collect the substance and to arrange his observations upon it: but recollecting that John Smith had not been examined, he was called in and sworn.”

JOHN SMITH SWORN.

Q. Do you know Mr. Friend of Jesus college by sight?

A. Yes.

Q. Do you recollect carrying a note to him from Mr. Watson of Sidney, within these two or three months?

A. Yes.

Q. Did you deliver it into Mr. Friend's own hand?

A. Yes.

Q. What did Mr. Friend say to you on that occasion?

A. It required no answer.

Q. Is this the only note you ever took from Mr. Watson to Mr. Friend?

A. Yes.

“ Dr. Kipling. I am now ready to proceed on article the third, and will repeat the passage. Here Dr. Kipling read. Mr. Friend objected that the passages as quoted by Dr. Kipling, were not in the book. Dr. Kipling said; to be sure it mentioned purity of arrangement, but he

left that out because he did not understand what it meant. We accuse him of defaming the liturgy. In proof of this assertion the promoter was going to read a passage out of the pamphlet published by Mr. Frend in 1789, but the defendant objected to this, and the vice-chancellor, after a considerable demur with the heads, said, we think that unless Mr. Frend allows that to be his book, and that he is of the same opinion now which he was then, it cannot be read. Dr. Kipling. I will then leave that article to the judgement of the court.

“ Dr. Kipling proceeded to the 4th article, and read p. 36, 37, 38, observing that the church of England must be included, as appears evidently from the context. For in page 36, the authour distinguishes the whole body of christians into the members of the church of England, the dissenters, then the few dispersed over England, called, unitarians. Page 37, he speaks of the great body as deviating from the worship of the one God. By this, therefore, he must mean the church of England and dissenters together. Certainly, therefore, the church of England is included. This great body he asserts to have associated the worship of created beings, p. 37, with that of the god and father of Jesus Christ. He charges us, therefore, directly with idolatry. He cannot be speaking of the church of Rome, for he says, p. 38, ‘ Let churchmen and dissenters examine how far they have deviated, &c.’

“ Vice-chancellor. I should be glad, Dr. Kipling, to hear how you make out that in the great body of christians the church of England is included. Dr. Kipling, I could have produced better evidence if I had been allowed. The 5th Article being read, and passages quoted from p. 39, Mr. Frend looked up and down the page, but declared he could not find it. Dr. Kipling. It is there. Mr. Frend. I cannot find it. Dr. Kipling. Mr.

Vice-

Vice-chancellor, it is exactly the same, 'tis all there except an omission. Here a loud laugh on all sides.

“ Dr. Kipling, after reading the 5th Article, said, I believe, Mr. Vice-chancellor, it is not unusual for the prosecutor to point out precedents for the direction of the court. I will produce one. In the year 1590, Mr. Charke was charged with asserting in a concio ad clerum, first that all bishops, archbishops, and the pope, were introduced by Satan, into the church. 2dly, with affirming, that there ought to be no ranks of superiority in the church whatever. He was brought before the vice-chancellor, and confessed the charge. He was called upon to recant; he refused, and was excluded from his college, and banished the university.

“ Mr. Frend. Was this done by the vice-chancellor and the heads, or in the vice-chancellor's court?

“ Dr. Kipling. It was done somewhere, I don't know where.

“ Dr. Kipling read the 6th Article, and said he had nothing to add to that article, he should leave it all to the court.

“ The seventh Article having been read,”

WILLIAM MATHEW, LL. B. Fellow of Jesus college, was called and sworn.

Q. Was Mr. Frend a fellow of Jesus college in the month of February last, and does he continue to be a fellow of the same at this time?

A. He was fellow in the month of February last, and is fellow at this time.

Q. On what ground do you affirm that?

A. On two grounds: first, because the admission to the fellowship in Jesus college appears upon the register of
the

the college, and because I pay to him such money as is due to him as fellow.

Mr. PLAMPIN called in again.

Q. Do you know that Mr. Frend was fellow of Jesus college during the whole month of February last, and that he continues still to be fellow?

A. Yes, I do.

“Commisary. It appears that a Mr. Frend was fellow of Jesus, but not that the defendant is that Mr. Frend.

Dr. Kipling. I believe it is the practice of the court to put the defendant to admit or deny it.

Court. You are to prove he is a master of arts.

Dr. Kipling. The register books prove that, but they are not here. But here is a young man who was examined for his bachelor's degree by Mr. Frend, and as none but masters can examine for that degree, it follows that Mr. Frend was a master of arts.

Vice-chancellor. That is no proof. People may take liberties which they have no authority for.

8th Article. The decree of 1603 was read, then the law de conceionibus from Prohibemus, by the bedell. Mr. Frend desired that the bedell might read any other laws, if any more were to be made use of. Dr. Kipling. I do affirm that he has offended these. Mr. Frend. Does the promoter mean to refer to any other? Vice-chancellor. If he does, he must produce them in time for you to consider them.

Dr. Kipling. I shall mention no more.

Mr. Frend. Does he refer to any more? if he does, let him declare them like an honest man.

Vice-

Vice-chancellor. Do you (to the promoter) mean to mention any more?

Dr. Kipling. At present I have no intention.

Mr. Frend. Will he be allowed, after this, to mention any more?

Vice-chancellor. If he does, time shall be given to Mr. Frend.

The 9th Article was then read, praying that right and justice be done.

Here the evidence was closed, excepting only the proof of Mr. Frend being a master of arts which was postponed to the next court-day.

The Vice-chancellor then asked, at what time Mr. Frend would be ready, and in what manner he meant to conduct his defence.

Mr. Frend said, that he intended to divide his defence into three parts, which might take up about two hours each; that he would comprise it in less if possible; that his health might not enable him to go through more than one part in a day, but he trusted that, if necessary, such indulgence would be allowed to him; he engaged it should not exceed that time.

Dr. Kipling then begged, that he might be allowed a little time to collect, arrange, and digest the evidence on the publication which had necessarily been so disjointed; and to add some observations upon it.

This was granted, and the court adjourned to Friday the 17th, 10 o'clock in the morning."

ACTA CURIÆ.

At a Court holden, &c. between the hours of ten and twelve, on Friday the seventeenth day of May, &c.

THE book of degrees, and a supplicat for the admiffion of William Friend, of Jefus College, to the degree of A. M. were produced;

And Dr. Kipling was heard upon the evidence heretofore produced in this caufe to the court;

And the court was adjourned to Friday next, the 24th instant.

HEADS OF THE PROMOTER'S SPEECH.

“ Dr. Kipling thought it incumbent on him to exprefs his acknowledgement to the vice-chancellor and the court, for the patient attention which they had fhewn to the caufe, and their indulgence in allowing him time to arrange the evidence, which had been various and detached, and to digest it in fuch a manner, that its combined force might be more clearly and fatisfactorily perceived. He declared, that he fhould avoid every thing perfonal and offensive, and confine himfelf folely to the merits of the caufe, as all his aim was to procure right judgement and equal decifion, and he trusted that the vice-chancellor and his affeffors would think it reasonable to expect the fame conduct from the defendant.

“ After this exordium he proceeded to fum up the evidence, and to direct it to the proof of three points, that

that Mr. Frend was the distributor, the publisher, and the author of the pamphlet, entitled Peace and Union.

“ The proof of the dispersion of Peace and Union was inferred from Alger’s copy bought of Lunn, marked L, and traced to Mr. Frend. 2d. From Mr. Lloyd’s copy, which was in the same manner traced to Mr. Frend. 3d. From Alger’s second copy, bought of Bowtell, and also the copy from the master of arts coffee-house, had from Merrill, which were also traced up to Mr. Frend. 4th. From there not being one copy fold in this place but by Mr. Frend’s direction.

II. “ The proof of the publication was inferred from,

“ 1. The parcel brought to Bowtell, opened by Mr. Frend, and accounted for to him. 2d. The directions given by Mr. Frend to young Bowtell to carry them out to Merrill’s. 3. The receipt of them by Merrill’s maid. 4. The testimony of Merrill himself. 5. The directions to young Bowtell to take them to Lunn. 6. The receipt of them by Life, Lunn’s foreman.

“ The promoter added to this article, he could enumerate more proofs, but they were unnecessary.

III. “ The proof of authorship was inferred from,

1. “ The name on the title page.
2. “ The cancelling of the appendix by Mr. Frend, at all the bookfellers.
3. “ Mr. Frend speaking of it to Life as his pamphlet.
4. “ Hodfon’s orders for advertisement.
5. “ Dr. Dickens’s copy, and Mr. Watson’s corresponding evidence. If after this, which was amply enlarged upon, any person be inclined to dispute, that

Mr. Frend is the author of the pamphlet in question, Dr. Kipling maintained, that he had at least taken upon himself the responsibility of it. Dr. Kipling then closed the account of the evidence, reserving however the right of answering Mr. Frend, if he should advance any thing to invalidate these proofs.*

“ The vice-chancellor then observing, that Dr. Kipling spoke from notes, said; Do you put the court in possession of those notes?—Dr. Kipling. I should have no objection: but they cannot be of any use: they are merely to assist my recollection: you could not read them.

“ Vice-chancellor to Mr. Frend. Are you ready to enter now upon your defence?

“ Mr. Frend. It must be clear that I cannot, as I have not yet seen the evidence that was taken down in the court, and I wish to know in whose hands it has been?

“ Commissary. It is no part of the *acta curiæ*; it is only for private assistance of the vice-chancellor and his assessors; it is no record.

“ Mr. Frend. Has any body had it?

“ Registry. Dr. Kipling.

* The heads of this speech will give the reader a complete idea of the substance of it, for nothing scarcely was added under each article, except passages taken from the depositions, and to do the promoter justice, it must be confessed, that this part was done in a very masterly manner. The names of the booksellers, and their servants, flowed with great ease from his lips, and their evidence was recited with a fluency and accuracy which would have done Dr. Kipling credit in the Old Bailey, or any other court of justice. As the reader however is in possession of the depositions themselves, it is superfluous to repeat them in this place.

“ Mr.

“Mr. Frend. By whose authority? I concluded he must have had some such assistance, from the singular fluency and accuracy with which he summed up the evidence which has been given. Who knows what liberties may have been taken with it? I shall certainly expect the same indulgence.

“Vice-chancellor. There was no reason why Dr. Kipling should not see it, nor can there be any why Mr. Frend should not.

“The vice-chancellor then proposed Monday or Tuesday for Mr. Frend to enter on his defence, but it being observed, by two heads of colleges, that those days were sermon days, and Dr. Fisher being obliged to be in London on the Wednesday, Friday was proposed and accepted. The vice-chancellor observed, that it was the wish of the court, that Mr. Frend might be able to finish all in one day. Mr. Frend replied: If it were possible he certainly would; but if he found it impossible, he trusted that he should meet with the same indulgence which had been granted to Dr. Kipling.”

ACTA CURIÆ.

At a Court, holden, &c. between the hours of ten and three, on Friday the twenty-fourth of May, &c.

MR. FREND was heard in his defence, having first reserved to himself the power of objecting hereafter to any part of the evidence, or of the proceedings heretofore produced and had before the court in this cause.

Mr. Frend having read certain objections to the evidence, particularly that the minutes taken by the registry in this cause had been taken out of court, and delivered to the promoter, and the registry being asked by Mr. Vice-chancellor, if the minutes had undergone any alteration while in the hands of the promoter, the registry declared, that he had looked over the minutes, since they were returned by the promoter, and that they had not undergone any alteration while in the promoter's hands.

Mr. Frend interposed a protest in writing, against the validity of the said minutes.

The grace book, containing the graces 1603, was produced: and it was admitted by the court, that the grace, ' placet vobis ut quicumque doctrinam, &c.' was not to be found in the said book.

Dr. Kipling was heard, in remarking on the defence of Mr. Frend, and

The court was adjourned to Tuesday next at eleven o'clock.

Mr.

Mr. FRENCH'S SPEECH.

Mr. Vice-chancellor,

I Think myself happy in having arrived at last to that period, in which it is permitted to me to speak in my own defence, and to refute those calumnies, under which, for so considerable a time, I have laboured. The patient attention, which you have bestowed on this cause during the fatigue of so many days, encourages me to hope, that you will listen to me with equal candour, and that I shall find no difficulty in proving to your satisfaction as well as that of the whole court, that the charges brought against me are, as I asserted on a former day, false, wicked, and malicious.

It is indeed a very extraordinary cause which now awaits your decision; a cause not to be paralleled in the annals of this university or even of the kingdom at large. For in what preceding period is it recorded, that a number of masters of arts and doctors combined together to attack the rights of a member of the senate? When was it thought necessary, that in defiance of the just power of the heads of this place, a cabal should erect itself into an inquisitorial office, and take under its cognizance the writings or speeches of an academick? When did the publication of a pamphlet give rise to a persecution like this, which, though in its consequences it is not so much to be dreaded as those of former ages, from the malignity and base arts of the conducters, and the total violation of law and justice with which it has been carried on, exceeds certainly every thing that has been recorded on the page of history.

About the middle of February was published a pamphlet, entitled 'Peace and Union.' It came forth at a time when the public mind was filled with the strongest apprehensions of dangerous plots against the peace of
this

this kingdom, and insurrections were supposed ready to break out in every quarter. As the highest authority had given the alarm, each man was in fear for his own safety, but no one could possibly announce from whence the attack should begin. Troops were dispersed incognito over the country, and a look or a jest was sufficient to rank the friends of mirth and good humour among the enemies of government. The university was not free from the contagion of the times, and there were among us men well known for their intriguing disposition, who endeavoured by every art in their power to countenance a deception, which ought not to have gained ground but amongst the lowest of the people,

Complaints made to
the Vice-chancellor.

On the first appearance of the pamphlet in question, it was held forth as a most dangerous attack on every thing sacred to englishmen, both in their religion and politicks. The flame ran from one to the other, and long before the contents could be digested, it was declared absolutely necessary for the safety of the university and of the state itself, that the author should be punished in the most exemplary manner, Individuals first complained to the vice-chancellor, then parties of two, three or more at a time, and at last a meeting was called of the disaffected, who, now well known by the name of the twenty-seven, entered into resolutions, appointing managers for the prosecution, and directing that proper steps might be taken to deprive the author of his degrees, and to banish him from the university.

Steps taken by the
promoter.

This important business could not however be completed with the rapidity with which it was planned. The promoter found that several previous steps were necessary, and above three months elapsed, before he was prepared to display his eloquence in open court. In this time every assistance was given to
him

him which the ablest barristers in town could afford; the publick oratour imparted to him his eloquence; from the Lady Margaret's professour he was supplied with elegance of diction; and the professour of civil law by communicating to him the whole of his knowledge in that profession, felt himself enervated at his usual lectures. But all this assistance would have been in vain if other means had not been employed: while the committee was compiling and arranging within, the familiars were engaged without doors, in searching out for information, in learning where the supposed authour spent his time, what was his conversation, what letters he had received, and to whom he had written. It was enough, that a familiar heard a person say, that he heard another person say, that Mr. Frend had been talking to another person about his book. In an instant the promoter flew to the rooms of the last mentioned person, sifted out the conversation, and adapted it to his purpose. One gentleman* was summoned to appear in this place, and was actually under the necessity of leaving a canvas in London, merely because it was his misfortune to have been chatting over a tea-table with some ladies, when Mr. Frend came in and joined the conversation. No stone was left unturned: bookfellers, bookfeller's boys, printers, friends, relations, and enemies, all were set to work to bring so great a criminal to justice.

Mr. Frend's conduct and assistance. Against these mighty efforts what had I to oppose? Nothing, Sir, but silence and my own innocence: trusting in the mean while to the natural effect of time and the good sense of the univer-

* The Rev. Mr. Davis, junr. fellow of Trinity college, was summoned in this manner, and, to his very great inconvenience, was present on the first day in the senate-house. The promoter, baffled in his schemes on that day, and universally reprobated for his conduct in this instance, was obliged to give up his intentions of bringing Mr. Davis down from town a second time.

fity, and not doubting that, when the cause was heard, the folly and malignity of the conducters would appear in the most striking colours. Not that I would have it supposed, that I came here without assistance. The university has seen me accompanied by three of its members, who would do honour to any cause. They are men of tried learning, abilities, and integrity. Men who ran to me in the hour of distress, and on whose kindness and support I shall to the last moment of my life, reflect with gratitude. Such men the university knows to be my friends.

..... quales neque candidiores

Terra tulit, nec quis me sit devinctior alter.

His principles misrepresented. Without the assistance of these friends

I must have sunk under the weight of prejudice with which the twenty-seven endeavoured to bear me down. Sir, I was pointed at as unfit to breathe this air; my religious and political principles were totally misrepresented; and such were the insidious arts used, that nothing but this publick appearance could ever have given me an opportunity of vindicating my conduct and character.

His declaration of belief in God. Sir, I have been represented as an here-

tick, deist, infidel, atheist. Shall that man be called an atheist, who firmly believes in the existence of one God, the parent, the protector, and governer of the universe? Shall he be deemed an atheist, who declares, and has always declared his conviction of the being of the first cause in the words of the church of England: 'there is but one living and true god, everlasting, without body, parts, or passions, of infinite power, wisdom and goodness, the maker and preserver of all things visible and invisible?' Is this the language of an atheist? Is a person, Sir, to be reprobated, who maintains these sentiments?

But,

in Christ. But, Sir, I may be considered if not an atheist, yet as an infidel. Shall he, Sir, be esteemed an infidel, who, for the second article of his creed, grounds his hope of salvation solely on Jesus Christ? Who looks upon his saviour as a person * sent from heaven to be the means of the greatest happiness to mankind? Is he an infidel who declares his saviour to be the great mediator between god and man, that his saviour gave himself up as a ransom for all, and through whom alone is eternal life, the free gift of god, bestowed upon a sinful world. However we may differ on other parts of our saviour's character, we certainly unite in these principles, which are the essential points of a christian's faith.

The third great point of his faith. In the third article of my belief, this whole audience, if we except the twenty-seven, unite with me. The belief of the two former articles, unless sanctioned by a firm conviction of the latter point, and the necessity of acting under that conviction, appear to me of little consequence. We may boast of our knowledge of and acquaintance with god, we may confound every gainfayer on the terms of our salvation, yet, if we neglect the principle of universal benevolence, our faith is vain, our religion is an empty parade of useless and insignificant sounds. That every christian is bound to entertain sentiments of universal benevolence, to love his fellow creatures of every sect, colour or description, is the third grand point of my faith. If any one, Sir, should ask me, to what sect I belong? my answer is, my sect is not confined to age, colour, or country. I am a firm believer in the truths revealed by God, but I usurp no authority over another man's conscience. Our lord and saviour Jesus Christ is the head of my sect,

* I am not sure that I made use of the words 'sent from heaven, or coming down from heaven,' but in either case they are to be considered as scriptural expressions, and consistent with my opinion, that Christ was not in existence eighteen hundred years ago.

he has laid down the rules of its faith and discipline. No one can encroach on his authority. His disciples are to be found in all nations and countries, of every age, language and colour. They may meet in places appropriated for publick worship, or they present themselves in private only before their god and father, the god and father of their saviour: but, wherever they are, they cannot persecute for opinion, they cannot treat their neighbour injuriously for any religious persuasion, they are connected together solely by the ties of universal love.

His political principles misrepresented by the twenty-seven. Since my religious opinions have been so much misrepresented, it is not surprising that equal attempts have been made to hold me up, on account of my political principles, as an enemy to my country. Sir, I have been ranked among that visionary herd to which it has lately been the custom to affix the name of republicans and levellers. Is it possible, Sir, to conceive, that a person educated as I have been, should entertain levelling principles? Is it likely that one who is accustomed to spend his life in study, and who, if such principles prevailed, would have no possible means of obtaining a subsistence, is it likely, Sir, that he should rank himself among levellers? The supposition is absurd and ridiculous. There is not, I am convinced, one man in this assembly, nay, I will go still farther, I do not believe that there is one man in this island, who ever dreamed of such a principle; My opinion on this subject is the same with that of the bishop of Llandaff, the principal of the man, who stands forward here as promoter in this nefarious cause. The bishop has explained what some men call the levelling principle, or the principle of equality, to be that which every englishman takes a pride in maintaining, an equality of rights. That the rich shall not oppress the poor, nor the poor riotously attack

attack the rich, that they shall be all equal in our courts of judicature, these are the true principles of equality. Or, I may explain myself still farther by what takes place among ourselves. We all come from our respective schools with different qualifications indeed, but in the eyes of the university we are considered as equals. We are employed in various exercises, we have opportunities equally given to us all of distinguishing ourselves, and when the inequality takes place, it is, or ought to be, from merit alone, the reward of the industrious use of our talents and our time.

of republicanism. Sir, the idea of an englishman entertaining the levelling principle, is absurd, and is countenanced only by those associations, which endeavour to set us at variance with each other: and the term republican is employed for the same odious purpose. I have read much, Sir, on the subject of government, and by spending the greater part of three years in different tours on the continent, have had frequent opportunities of comparing with our own the various forms which prevail abroad, and I maintain that, excepting the small democratical cantons of Switzerland, we have the greatest claim to the title of republicans of any nation in Europe. If to be an advocate for the just rights of the people, if to conceive that liberty depends on the people declaring their sentiments by representatives in parliament, if to contend strenuously for the independance of the house of commons on every person except the people, if to wish for a better representation of the people, if these, Sir, are the sentiments which will entitle men exclusively to the name of republicans, I acknowledge, that I am a republican. I exult in the privilege of my birth-right, and being an englishman, I rejoice that I also am a republican. And is there, Sir, a man in this assembly, is there an englishman, who does not maintain the same sentiments? By

asserting our privileges, which set us far beyond the other nations, it does not follow by any means, that we would usurp the prerogatives of the first magistrate, or encroach on the rights of the lords of parliament.

He is accused of rejoicing on the french constitution ;

But, Sir, I am accused of a still greater crime, I rejoiced at the success of the french revolution. Yes, Sir, I did rejoice at the success of the french revolution, and is there an englishman, who did not exult on this occasion? At what period did I rejoice? was it not at the time when every good man rejoiced with me, when tyranny received a fatal blow, when despotism was overthrown by the united efforts of all orders of men in an extensive empire? Was it not, Sir, at the time when that horrid dungeon was destroyed, in which had been tormented so many wretched victims of caprice and effeminate cruelty? Was it a crime, Sir, to rejoice, when the whole nation was of one mind, and this university thought it a duty to impress the sentiment on our young men, by giving them as a proper subject for their talents, the taking of the bastille? It was glorious in the university to unite with the general voice, and in the most publick manner to express its indignation at tyrants and tyranny. I did, Sir, rejoice at the success of the french revolution: but does it follow, that I was pleased with the scenes which succeeded, that I now look with joy and not with horror on the dreadful outrages to which that country has been exposed? The massacres and bloodshed, disgracing so noble a cause, have pained every lover of freedom; and, viewing the conflicts of the most horrid passions of the human mind, we have been left in a wretched state of suspense, and not having sufficient grounds for uniting fully in our wishes for the success of any party, we have conceived, that silence on french affairs, is most adviseable.

of corresponding with the national assembly. If to exult at the approach of freedom to a great and powerful nation was a crime, with what eagerness was the news circulated, that to make up the measure of my iniquities, I corresponded with the national convention! In laying this to my charge, they did me the honour of uniting me with four gentlemen of the most respectable character in this university, and as I am convinced that they would do nothing unworthy of the character of englishmen and academicks, the accusation, though intended to bring on me as much publick obloquy as possible, was rendered of less effect. As to myself, Sir, I here declare that neither directly nor indirectly did I ever correspond with the national convention, and I make no scruple of saying, that with respect to the gentlemen, with whom I was supposed to be associated in this transaction, I do not believe that any one of them was ever engaged in such a correspondance. Not, Sir, that I think there was any disgrace in corresponding with the national convention, but so obscure an individual as myself could lay no claim to the notice of that assembly. If I could have suggested any thing to promote the welfare of that assembly and the nation, which it represented, I should certainly have taken pleasure in doing it. They were our friends, there was no war declared between the two nations, they deserved our friendship, for they had broken the bands of slavery, and aspired to the honours of freedom.

Division of the discourse. Having thus endeavoured by an explicit declaration of my sentiments to remove the calumnies which have been so industriously circulated respecting my religious and political principles, I come now to the more immediate object of my defence. I am accused of publishing a certain book, and by that publication of impugning religion as established by publick authority, and by such impugning, of violating the laws and statutes of the university. My discourse is naturally

naturally divided into three heads. The second is branched out into four articles. In one, I am charged with defaming the liturgy; in the second, with calling the worship of the church of England idolatrous; in the third, with asserting that all ecclesiastical courts, ranks and titles, are repugnant to the spirit of christianity; and in the fourth, with profaning and reviling the most sacred offices of the church. Under the third head are mentioned two laws which I am supposed to have violated, the one a statute de concionibus, the other a grace passed in the year 1603. Of all these I shall treat in their order, and for that purpose I request that the second article in the charges delivered to me may now be read by the officer of the court.

Here the second article was read.

‘ 2d. Also, We article and object to you the aforesaid William Frend, That in the present year of our lord one thousand seven hundred and ninety-three, you did publish, and cause to be dispersed within this university, a scandalous book or pamphlet, of which you are the author, intitled, Peace and Union recommended to the associated bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jesus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793; which said book or pamphlet is annexed to these presents, and prayed to be admitted as if inserted herein: and we article and object as above.’

Promoter's idea of personalities.

Sir, I am accused in this article not only of publishing a book, but of publishing a scandalous book: and here I cannot help admiring with what modesty and address the promoter in summing up the evidence against me requested that, as on his part all personalities should be avoided, the same might be required on the part of the defendant. Well might he
be

be anxious to preclude me from all personalities in my reply. Satisfied with the abuse which he and his adherents had before so liberally bestowed, he might well be content to refrain from further personality, provided I might be withheld from expressing my just sensibility and resentment. Doubtless he had a right to make this request, as there is no personality in declaring a member of the senate the authour of a scandalous book! It is not at all personal to assert that Mr. Friend is unfit to breathe the air of this place! It is by no means personal to endeavour to deprive him of his degrees, and to expell him from the univerfity! Had I indeed, Sir, taken notice of a late publication of the learned promoter, had I asserted that the work, which he has given to the publick under the sanction of the univerfity, is a disgrace to a man of letters, that after all the labour bestowed on it it abounded with so many and such gross blunders, as instead of a fac simile it was more properly speaking a fac contrarium, that his prolegomena were filled with quaint allusions and inaccuracies of expression, at which a boy in the lowest forms would blush; had I asserted such things of the learned doctour, I should have been called a dealer in personalities; but, when he accuses me of writing a scandalous book, then, Sir, it ceases to be personality!

Let him not then esteem me personal. I will not charge him with reading scandalous books, I will not accuse him of vitiating his taste by the perusal of those vile and profane authours of antiquity, which to our shame many of us still keep in our studies. This would be scandalous indeed. The learned doctour is better engaged than in commenting on a Cicero or a Demofthenes: with these profane authours he has long ceased to have any communication: his stile is formed on much better models, and we cannot but admire the streams of eloquence which he has derived from the enchanting remains of a Sanctus Pachomius, Theodorus Beza, and Sanctus Bernardinus.

Though

The charge false. Though, Sir, I disdain every species of personality against this promoter, I must be allowed to say that his charge is false. The book entitled Peace and Union is not a scandalous book, it is not deemed a scandalous book by some of the most respectable members of the houses of lords and commons, it is not esteemed a scandalous book by several very distinguished characters in the literary world, and in the judgement of many persons among us eminent for their learning and abilities, this work so far from being deemed scandalous, is thought to contain a variety of topics of the utmost importance to the state, and deserving the attention of every lover of his country. With all these I most cordially unite in wishing, that instead of blackening and defaming the character of the writer, the promoter and his twenty-seven had the candour and ability to answer the publication.

But whether the work is scandalous or not, let us consider, what proofs are brought by the promoter that I am the authour of it. After so many days employed by him in endeavouring to prove this point, it would be a very bad compliment to pass over without some notice, the labour in which he has so strenuously exerted himself. On this account it will be necessary to make some previous remarks on the proofs of authorship in general, from which we shall easily perceive with what shallow proofs the inquisitorial spirit is contented, when the ruin of an individual is the only point to which its zeal and malice are directed.

Marks of authorship. There are two ways of discovering the authour of any work, which may be called the external and internal marks of authorship. The external depend on two things, either on the authour himself, or persons, who have had the means of being acquainted with the authour's proceedings. Should a person declare himself to be the authour of a given work, though this is not in
itself

itself an absolute proof, it is sufficient to subject him to the praise or censure which would have been bestowed on the authour. If the authour does not choose to avow himself, before those, who might be supposed entitled to question him on the subject, and it is asserted that he has elsewhere made this discovery, we must be particularly careful what credit we give to the testimony of the witnesses, who come forward on such an occasion. We must examine their characters, whether they are friends or enemies, whether they are likely to speak the truth fairly and openly, or whether the zeal of religion might not induce them to hazard a pious fraud by way of getting rid of a dangerous opponent to their fantastick theories. Besides, we must consider, whether they are competent to give a legitimate proof: if they can neither write nor read, it will avail but little, that they heard a person call himself the writer of a given work, as the work before the court may be of a different nature and tendency from that, whose title only was mentioned in their hearing.

Internal marks. The internal marks of authourship are various. It is unnecessary before this learned audience to investigate the methods, by which many of us, from having perused the writings, or heard the discourses of any one, can pronounce with ease, whether a work in question belongs to him or not. They can point out the beauties or the deficiencies of his stile, his plan, his language. They can say at once, such a sentence was certainly the effusion of this writer's zeal, or, again, none but that doctour could have possibly indited this paragraph. For instance, who, that has read the prefaces of the learned promoter, or has heard his distinguished eloquence in the divinity schools, can doubt that he is the authour of the late prolegomena? Could Cicero or Livy have written in such a manner, could they have ventured on such flights of fancy, could they have raised themselves to surprize the
 O mind

mind with such beautiful changes of cases and those noble deviations in the moods of verbs? Are not their metaphors feeble when compared with those used by our sub-professor? Where shall we find such latinity, where shall we meet with such beautiful specimens of quotation *?

Dr. Kipling wrote his own prolegomena; No one, who has the least pretensions to critical acumen, would, on balancing all these circumstances, doubt that Dr. Kipling, as his signature declares, is and could alone be the authour of his prolegomena. The work itself also carries internal marks of the editour. The perfect resemblance it bears to the original, having no other difference than that in several places the type is turned topsy turvy, convinces us that no one but the promoter has any claim to the merit of having corrected the prefs.

but is not punishable by law. But, Sir, strong as these internal marks are, and stronger perhaps cannot be brought, I must contend that they can be of no weight in a court of justice. It will not suffice to say, the stile is the same, the language is the same, the errors are exactly such as might be expected from this authour; still no upright judge would be contented. The stile and language may be imitated; there have been frauds even in the literary world, and nothing but external proof can make an authour amenable to a court of justice for any publication. Hence in the present case, when the promoter wanted to prove the pamphlet entitled Peace and Union to be mine, from a fancied resemblance between certain passages in it, and others in a pamphlet written four years ago, the court very properly rejected the attempt.

External marks. Many external marks are not available. Neither the title-page, nor publick estimation, nor writ-

* See the learned promoter's preface to what he calls a fac simile of the Codex Theodori Bezae Cantabrigieensis.

ing, nor the delivery of books are, separately or in conjunction, sufficient proofs of authorship.

Title pages. Dr. First, with respect to title pages, I shall, Sir, bring two proofs, which I have no doubt will convince every unprejudiced mind, that my opinion is well founded. The one shall be taken from the university of Oxford, the other from our own. We have all of us heard the fame of a celebrated professor of oriental literature in the university of Oxford. Some time ago he published under his own name a volume of sermons, which he had also preached in the university church. They were admired by every body, were held up as models of composition, as a complete victory over the hereticks, particularly those, who go by the name of Socinians. Nothing could be urged against them, they were unanswerable, so great a champion as the oriental professor was invincible. So much and so universally were they esteemed, that a late lord-chancellor, well known for his love of pure religion and his regard for the interests of the church, felt himself called upon to reward such singular merit, and actually bestowed on the person whose name they bore a handsome piece of preferment. Who could then, Sir, entertain the least doubt of ascribing infinite merit to this learned writer? Who at first supposed that this great man could get up and preach before the university sermons not his own? The supposition would have been treated with contempt, if a concurrence of circumstances had not justified it, and the world is now in possession of the proof, that these noted sermons owe their celebrity to the united efforts of a once eminent dissenting minister and a doctor of distinguished merit of our own university*.

* Mr. Badcock and Dr. Parr.

See White's sermons for the Bampton lecture, and the controversy on them, in pamphlets by Dr. Gabriel, Dr. Parr, and Dr. White.

Kipling's Beza. A book lately appeared among us under the title of *Codex Theodori Beza Cantabrigienfis*. Now, Sir, not venturing to trust to my own interpretation of these words, I consulted a learned friend, who declared it could mean only the codex of Theodore Beza, a Cambridge man. Was Beza then the authour of this work, or was he not? Did he write it? Did he compose it? Did he publish it? No such thing. He wished, that it might not be published. So far from his writing or composing of it, it appears to be a transcript of the four gospels and the acts of the apostles, which he purloined from a monastery in the course of the civil wars of France, and either not liking the various readings contained in it, or fearing that it might be claimed by its proper owners, he made a present of it to the university, to be edited in a future age by some promoter, though not so learned, yet as bigotted and bloody-minded as himself†, who should make the great discovery, that Beza was a Cambridge man.

Thus, if title pages are to be taken as proofs of authourship, we may attribute to the oriental professour of Oxford a variety of errors, which arose solely from his friends being unacquainted with the writings of Mohammed and his best commentatours, or celebrate him for the splendour of a diction which is not to be expected from one of his indefatigable industry, in discovering the roots of words and exploring the sources of egyptian literature. The latinity also of the learned promoter might not only tend to persuade us, that Beza is a Cambridge man, but fix on him the stain of various heretical opini-

† The learned promoter is very fond of this question: Christians are allowed to eat blood. *Licet christianis fanguine vesci*, and the university has been abundantly satiated with it in his divinity schools.

ons, to which his codex is supposed to give a sanction, and make him liable to a summons into the vice-chancellor's court.

Publick report. Publick estimation is also no proof of authorship. We have all of us either seen or heard a variety of epigrams, circulated not many years ago, full of reflections and scurrilous remarks on the heads of colleges and men high in rank and office among us. For some time it was the fashion to ascribe them to one of our most celebrated mathematicians. They went under his name. Every one pronounced them in common conversation to be his, and if he had not expressly contradicted the report by openly disclaiming them, his fame might have gone down to the latest posterity rather as a satirist than a mathematician. Thus would our first character for eloquence have been deprived of an honour which is due to him alone, and which it is to be hoped, he will enjoy henceforward unrivalled and without dispute*.

Hand-writing. The hand-writing of a person is still less a proof of authorship, as we all know how easily it may be forged, and a person must have attained either great facility in the art of distinguishing hands, or great powers of swearing, before he can ascribe a writing to any individual. Besides, should the writing be proved to be that of any person, it does not follow that he is the author of the composition, he may have been only a copyist.

* Mr. Mansell, the public orator, feels himself very much hurt at this paragraph, but those who have known him for many years, have been no less hurt, that the epigrammatist should turn a persecuter: and of all the farces, with which in his sportive humour he has amused the publick, none seem so perfectly contemptible and ridiculous as that which he has lately acted: that Mansell should be a sub-promoter, should be an assistant to Kipling, should affect to talk of religion, out-herods Herod.

Delivery of books. I need not dwell a moment on the absurdity of supposing, that the delivery of books can prove authorship, as in that case we shall convert all our bookfellers into authors, or at least make the deliverers of any work into the feller's hands members of the literary republick,

Promoter's proofs. Having thus, Sir, considered the general proofs of authorship, let us now examine those which the promoter has brought in favour of his assertion. These are of two sorts, either by evidence or by writing. By the evidence of bookfellers and their servants, a printer of a publick paper, and certain gentlemen of the university. On the evidence given by the tradesmen and their servants I have not a single reflection to make. Having no sinister views, nor any other object than a plain statement of facts, they told what they knew with a plainness and integrity which must do them credit in the opinion of all who heard them. But to what did all their evidence amount? The bookfellers and their servants relate that they received the pamphlet entitled, Peace and Union, either from Bowtell's boy or from his house, except that one declares that he received twenty copies from myself at my own room. The copies at Bowtell's appear to have been brought by the St. Ives carrier, and Mr. Frend is said to have ordered certain packets to be sent to the bookfellers and to his friends in the university. The printer declares, that he received the copy of an advertisement from Mr. Marsh, to be inserted in his paper, as also an order from Mr. Frend in person to repeat the advertisement, and afterwards a note from him stating the price of the pamphlet. Being asked whether he could swear to my hand-writing, he said all that an honest man could on such an occasion. He was too well acquainted with the nature of an oath, and the mistakes which a
man

man even in his profession might make, to swear positively to the hand-writing of any person. Yet, Sir, I may venture to say that he has seen me write oftener and seen more of my hand-writing than any person in this audience, but he would give his conjectures only, and could not be brought by any means to make those round assertions, which we heard with astonishment from a quarter, whence they were least to be expected*.

Mr. Lloyd's evidence. Mr. Lloyd's evidence, Sir, is too curious to be passed over in silence. He appeared in court, as it should seem, in a mode prescribed by the promoter with a book in his hand. Enter Mr. Lloyd. Pray what have you in your hand, says the promoter? A book. What book is it? Peace and Union. Where did you get that book? At Mr. Lunn's shop. What did you get it for? To bring the charge home and to convict Mr. Frend, replies this unbiassed witness, who being questioned concerning some transactions at the vice-chancellor's lodge, declared that he did not come prepared to answer such questions.

Written letters. The evidence from writing is chiefly confined to certain letters said to have passed between Mr. Watson and myself. The letters are produced in court, and to prove them mine, step forward Mr. Kilvington and Mr. Plampin,

..... Arcades ambo
Et jurare pares, et respondere parati.

They look on the notes, they are asked whose hand-writing it is. For the first note, Mr. Frend is the reply: for the second and third Mr. Plampin is not quite so positive. To this proof, that I wrote the notes, is added presumptive evidence from a conversation, which I had with Mr. Watson on the subject of the price of spinning wool, which happened then to engage the attention of

* See Mr. Kilvington's evidence.

the university; and as I carried with me sufficient proofs that Mr. Watson's statement was wrong, I must necessarily have been the writer of the notes. There is however a better proof remaining. Mr. Watson sent a servant once with a note to me, on the receipt of which, I said, it required no answer.

Dr. Dickens. In this account of the evidence, I have been in danger, I perceive, of omitting a very important one, though for what purpose he was brought here, neither the court nor myself can possibly devise. Dr. Dickens is a clergyman well known in Huntingdonshire, and, with the singularity and vivacity of his conversation, many gentlemen in this university have been frequently entertained*: he writes sermons, which nobody reads, and generally sends me, and many others of his acquaintance, a copy of his publications. Considering him as an harmless old man, who had not forgotten the few scraps of Latin which he learned at school, I have sometimes visited him, when in his neighbourhood, and he occasionally indulges me with a sight of his sermons in manuscript. In return, he might be thought to have a claim on me for a copy of my publications; but he is brought here to relate a circumstance, which taking place in Huntingdonshire, cannot be made an object of enquiry in this court. The fact is simply this: he met me one day in the house of a stationer at St. Ives, where I frequently, as is usual to persons in the neighbourhood of a market town, go to execute any little commission, to read my letters, or the paper, or, if occasion requires, to write letters. Dr. Dickens found me writing some letters, and near me were some pamphlets, one of which I told him I was going to send to an old friend of his. He took up a pamphlet, and said, he must take it with him, and, in the free and easy way for which this facetious divine is noted, he bore it off, not only without, but actually against my

* See the Dr's. evidence, p. 32.

consent;

consent; and this book, thus taken, is, it seems, brought here to prove that it is a production of my own pen.

Such is the evidence which the promoter has collected from all quarters, sparing neither age nor sex, and on which he means to rest his position, that I am not only the publisher, but also the authour, of the book in question.

Proofs inconclusive. Unfortunately, however, Sir, for the promoter, his proofs are inconclusive. For, first, with respect to his witnesses.—Several of them are of the twenty-seven, that is, of the original body of accusers, and one, the most material, is his own servant. Besides the general objection to the twenty-seven, there is one of a distinct and separate kind, which I feel myself with infinite concern compelled to produce. It is so materially interesting both to the witnesses reputation, and my own, that I did not choose to trust the explanation of my sentiments on this head to the casual observation of the present moment, but put it down in writing, and shall make no apology for reading it from this paper.

Here Mr. Frennd read the following paper.

Mr. Kilvington's evidence. Mr. Kilvington declared, that ' My studied attentions, shewn to him as they were, he believes, to all those whom I was desirous of profelyting to my own opinions, were such as to have impressed, verry deeply on his mind, the recollection of my hand-writing.'

The world will be at a loss to guess, how far any attention to a person can convey a knowledge of hand-writing, unless those attentions had been signified by an intercourse of letters: but they will be at no loss to discover, that the proof of my hand-writing was the least part of Mr. Kilvington's design. It was to gratify his own malignity, that he seized the opportunity of asserting

ing a falsehood, which he had forgot how easily I could repel. Had I been permitted to try his skill in the interpretation of hand-writing, he would have been abashed to see, under his own hand, an acknowledgement which totally did away the slander of such an imputation. But I was told, that to urge the reading of his letters then, would weaken my defence. How, Sir, am I to defend myself now? Will this remonstrance be entered on the records? Will these letters be inserted in the *acta curiæ*? No, Sir, there will still remain an accusation without an answer—an accusation compared with which, the present charge is absolutely nothing. Sir, how slightly soever others may esteem—how slovenly soever others may discharge the duty of a tutor in giving lectures, in my idea, it was one of the most sacred deposits which could be confided in the hands of man. To betray this trust by prejudicing young minds, in those points where they ought to be left to the fair result of their own enquiries, would be base and treacherous: yet this is the treachery with which I am charged. My name is to go down to posterity, loaded with the infamy of practices I abhor; and from the imputation of which you were in vain solicited to protect it.

I do not mean, in vindicating my own conduct, to retort the accusation upon another; but I mean to disclaim, in the strongest and the most publick manner, in the face of this court, and of god, a practice which I abhor.*

Mr. Kilvington cannot, I suspect, have duly considered the extent and import of the word to proselyte. The
zeal

* The letters thrown down, were two received by me in the year 1788, the one dated July 19th, the other July 24th, which I accidentally found about a month after the first meeting of the twenty-seven at the vice-chancellor's lodge. On finding that Mr. Kilvington had taken so active a part in the prosecution, I
shewed

zeal of profelyting is of a peculiar nature, appropriated in scripture to a particular body of men. Ye, says our saviour, compass sea and land to make one profelyte.

shewed them to some of my friends, as instances of the gratitude of the faints. The greater part of them is taken up with the business of college testimonials, and at the conclusion of the first Mr. Kilvington's words are :

I shall make no further apology for the trouble I am now giving you ; but must say, that it will give me the greatest pleasure to render you any services in my power, either in this, or any other part of the world which I may chance to be fixed in.

I am, with great respect, dear Sir,

Your very faithful and affectionate servant,

EDWARD KILVINGTON, Jun.

In the second letter, he tells me, after some further business on the testimonials :

The cure, which I have engaged to accept, consists of two parishes, Knockholt, and Downe, in the county of Kent. They are situated in a most delightful part of the country, between Bromley and Sevenoaks. The present incumbent is the minister of our parish church ; and, as he will be desirous of residing occasionally for a week or two, I have engaged on those occasions to officiate for him in London. The allowance is to be fifty pounds a year, together with the use of the parsonage furnished and provided with attendance. I am persuaded you will be happy to hear of my success, and I have therefore given you so circumstantial an account.

I must again apologize for the trouble which I am presuming to give you, especially as I can never hope for an opportunity of discharging the obligations which I already labour under.

I am, with great esteem, dear Sir,

Yours, most affectionately,

EDW. KILVINGTON.

Now is it probable, that, if I had endeavoured, with studied attentions, to draw off Mr. Kilvington from the church, he would have given me so circumstantial an account of his entrance into the office of minister in that church ? Would he have been persuaded, that I should be happy to hear of his success in it ?

To whom does he say this? To whom but the scribes and pharisees? And who were they? Take a few traits of their character, as it stands afterwards marked in the language of our saviour himself. All their works they do to be seen of men: for a pretence they make long prayers: they outwardly appear righteous and unto men, but within are full of hypocrisy and iniquity.

I am well aware how apt we are to apply antient descriptions to present manners; and I should not wonder if the world were ready to discover in this place a set of men, to whom the pharisaical character applies at least as strongly as to me: but let me caution them against rash judgement; the Margaret professor has amply vindicated the character of those people from such an imputation. Bigots, and zealots, says he, are wonderfully expert in making infidels; they never, I believe, convert any*.

Mr. Frend ceased reading, and continued his discourse.

Maxims of civil law. I have said that many of the witnesses were of the twenty-seven, and one is the promoter's own servant. Now, as the determinations of the court must be made *secundum jus civile*, it is evident that these witnesses are inadmissible. These are the maxims of the civil law.

If the witness has any interest in the fact concerning which he is desired to give evidence, he will be rejected. For one cannot be sure that he will make a declaration contrary to his own interest.

Nullus idoneus testis in re sua intelligitur. l. 10. de testib.

The persons who have a dependance on the party, who would make use of their testimony, such as menial servants, being suspected to favour the interest of their

* See Mainwaring's dissertation before his sermons.

master, and to declare only what he desires, their evidence ought to be rejected.

Idonei non videntur esse testes, quibus imperari potest, ut testes fiant. l. 6. de testib.

Testes eos quos accusator de domo produxerit, interrogari non placuit. l. 24.

With these maxims of the civil law, the opinion and the practice of our courts of common law agree. Courts of justice, says lord Mansfield, do not sit to weigh what degree of temptation the minds of men are capable of resisting, but to take care, that they shall not be exposed to any temptations whatsoever. But even, if such evidence as that of the twenty-seven, and the servant of a prosecutor, were admissible in vulgar courts, in this, from the rules of the civil law, it must necessarily be rejected.

Hand-writing. The similarity of hand-writing, is a species of evidence which, in a cause of this nature, is equally inadmissible. The memorable and excellent Algernon Sidney was convicted by a Jefferies, on a comparison of hands, yet, to the honour of our legislature, his attainder was reversed; and it is declared in the act of parliament passed for the reversal*, that comparison of hands is no evidence of a man's hand-writing in criminal cases, and the same doctrine is acknowledged and laid down in the state trials, and Hawkins's pleas of the crown †.

Distribution of books. The whole that has been brought forward on the distribution of books, falls to the ground, from the single evidence of Mr. Bowtell, who is my agent for the distribution of books, and has informed you, that he has frequently received from London, and other places, parcels of books of various authors, to be sold or dispersed by him on my account. It is also in the recollec-

* William and Mary, c. 7. of the private acts.

† Hawkins, 431.

tion of a considerable part of this audience, that I have frequently distributed myself books in the university. During the agitation of the questions on the slave trade, and the repeal of the test act, I distributed a vast number of books in this place, and carried, in person, to every head of a house, a valuable work of bishop Hoadley on the liberty of conscience. Indeed I speak, I think, within compass, when I say, that ten thousand books of various sizes, written by various authours, have been dispersed from this place, either by myself, or by Bowtell, under my direction. The distribution of these books, therefore, is no proof of my being the authour of this work; for, if such a proof is allowed, on the same principles I may be called to an account for many sentiments totally opposite to my own, advanced by a variety of writers.

Mr. Watson's wool-spinning,

It would take up too much time to examine seriously the evidence given by Mr. Watson, and a long and irrelevant correspondence about the price of spinning wool. Well indeed, Sir, might you express your curiosity to know how this business could possibly affect the question before the court, or what strange resemblance the promoter had found out between wool-spinning and writing a book! There is not a word about wool-spinning in the pamphlet in question. Mr. Watson indeed says in one of his letters, that he did not refer to Mr. Friend's publication, and Mr. Friend replies that he did not refer to his publication, but solely to an assertion of Mr. Watson respecting wool-spinning. But this was quite enough, the secret was now out, Mr. Friend had said his publication, and the familiars, who were upon the watch for every incident, seized this fatal note with eagerness and bore it off in triumph. It was read at the master of arts coffee-house, then at St. John's, from thence it travelled to Caius to the sub-promoter Mr. Belward*,
thence

* Mr. Belward got up some time after, and with some warmth declared, that the notes were never brought to him. How this
great

thence to the promoter; all read, all rejoiced, and all with the same sagacity concluded, that Mr. Frenck must certainly be the authour of Peace and Union, because he he did not, he expressly said, refer to his publication. Thus the promoter boldly told the court, that the pamphlet entitled Peace and Union must be Mr. Frenck's, because he supposes that Mr. Watson and Mr. Frenck could not be talking of any other publication; whereas it is well known, that Mr. Frenck has written several books, and during the course of the winter he has certainly been engaged and is now engaged both in writing and publishing. On the whole the remark of the two countrymen seems to me the best that can be made on this wool-spinning business. Seeing Mr. Watson standing so considerable a time in a very forlorn situation, examined by the promoter, confronted with other witnesses, questioned by the bench, again examined, again confronted, reading letters about wool, and answering interrogatories on the same subject, alas! poor gentleman! says one to the other, he is guilty, he certainly stole the wool.

The whole evidence null and void.

Thus, Sir, I have examined this voluminous body of evidence, which the promoter has taken such pains in compiling and arranging, and with which he has fatigued us for so many days. Its little worth is apparent from the remarks already made on it, and the promoter seems to have been conscious of the weakness of his cause, and desirous that it might fall to the ground, as he has taken a step which renders the whole of his proceedings null and void. Sir, I contend that the taking of the evidence out of court, the giving of it to the per-

great sub-promoter came to be overlooked has given rise to various suspicions. Mr. Frenck begged his pardon, for giving too hasty credit to the history in this respect, and should be very glad to absolve Mr. Belward from any other absurdity in the management of this cause, for which, as a sub-promoter, till he vindicates himself before the publick, he stands accountable.

fon

son who is most materially concerned in converting it to his own purpose, renders it both on the principles of the civil law and the law of England incapable of being used by the judges of this court: it has lost its authenticity, it cannot be considered as the same evidence, it cannot be made in this or any future court of review the foundation of a judicial decision.

The civil law says: It is not enough to give the declaration of a witness the effect, which it ought to have in justice, that the witness himself writes or causes another to write his evidence, and that he gives it or sends it to the judge, but it is necessary, that he appear before the judge, and that the judge himself interrogate him, and put down his declaration in writing.

The declarations, Sir, as well as the interrogatories were put down in writing by the registry, and they have since been out of court for some days in the possession of the promoter. That they are vitiated by such a step is evident: for, how can the judge now know that the interrogatories and the answers, by which he is to determine the cause, are the same that were committed to writing in his presence? The common law of England is equally tender with respect to evidence, and does not permit a cause to be decided by a jury by any other evidence than that which was produced before the court, and if there is the appearance only of any other evidence being laid before the jury, the cause falls ipso facto to the ground. This appears clearly to be the law of England from the case of Metcalfe and Dean (Croke's reports, folio 189) in which a jury withdrew out of court, and, after having called a witness to repeat the evidence delivered in open court, returned and gave their verdict for the defendant. This was represented to the judge, and the jury in vindication of themselves said, that the evidence given to them privately was the same in effect as that given in open court, *et non alia nec diversa.*

diversa. The judge however considered this private examination by the jury as illegal and set aside the verdict.

If then the mere repetition of a viva voce evidence in presence of a whole jury, who could not be supposed at all interested in the decision, was sufficient to set aside their verdict, how much more strongly must the rule obtain in a case, where the questions and answers are distinctly repeated and put down in writing, and the prosecutor has been permitted to keep the writing in his own possession, and to garble it as may best suit his own corrupt purposes.

Here the commissary interposed and desired Mr. Frend to understand, that these minutes were no record, they made no part of the *acta curiæ*. Mr. Frend replied that in his idea this made no difference in the case, they certainly constituted the body of evidence by which the court was to decide. Then addressing the judge he continued.

On these grounds, Sir, I contend, that there is now no evidence before the court, and the judge, who is bound by our statutes to determine *secundum jus civile*, has nothing before him, on which to ground a judicial decision: therefore, after having read my objections to several witnesses, I shall beg leave to protest against this particular informality, and the use of the supposed evidence, returned by the promoter to the registry, either in this or any other court of justice.

Here Mr. Frend read the following papers:

I.

I object to the promoter's mode of producing evidence as unprecedented and unwarrantable in any court of justice.

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1. A4

1. As the witnesses were not only examined in the presence and the hearing of each other; but as the witnesses were repeatedly reminded not only of what they had said before, but also of what the preceding witnesses had testified.

2. As it was apparent, in many instances, and expressly avowed, by several of the witnesses, that the promoter had himself directed the evidence which they were cited to give, and prepared with materials for his purpose.

3. As the witnesses were not allowed to go through their respective evidences at once, but were called and re-called frequently, in a manner totally contrary to the practice of all other courts.

4. As the interrogatories were very frequently insidious and leading questions.

5. As witnesses were personally confronted, in order to prove identity, and not left, as they usually are, to the casual discovery of the person.

II.

1. I object in particular to the evidence of Harvey Alger as inadmissible, he being the menial servant of the promoter of the cause.

2. I object to the evidence of the Rev. Mr. Lloyd, he being one of my original accusers and directors of the prosecution, and having expressly avowed in court a disposition totally irreconcilable with the purpose of candid testimony.

3. I object to the evidence of the Rev. Mr. Kilvington, he being also an original accuser and director, and having besides uttered, in the course of his evidence, an irrelevant

relevant and deliberate falsehood, which ought to invalidate every other part of his testimony.

4. I object to the evidence of the Rev. John Plampin, and of Mr. Mathew, they having also been original accusers and directors, and having besides already prejudged the cause in my own college, and condemned me without giving me an opportunity of making my defence.

III.

I object to the validity of the minutes of evidence in the state in which they now appear since they have been taken out of court and put into the promoter's hands; and I must beg leave to enter my protest against this informality, which is utterly repugnant to the established forms of law.

W. FRENCH.

Protest of the UNDERSIGNED against the validity of the evidence in this cause.

The witnesses cited by the promoter of this cause having been examined in the court upon interrogatories proposed by the said promoter, and taken down in writing by the registry of the court before they were put to the witnesses, and the answers of such witnesses having been also taken down by the registry, the evidence of the several witnesses so recorded by the registry, ought to have been kept in court as an official minute of such evidence; but the original minutes of the evidence, as taken in court, having been delivered out of the hands of the proper officer, and put into the custody of the promoter, I do protest against such evidence, and do declare that it has lost its authenticity, and cannot be considered as the same evidence, or ever be made, either in

this court, or any future court of review, the foundation of a judicial decision*.

W. FREND.

The vice-chancellor now asked the registry, whether the minutes appeared in any part to have been at all altered? The registry answered, No. The jury, Sir, said Mr. Friend, in Metcalfe's case, declared the same: the witnesses had not varied a tittle: the evidence was nec alia nec diversa. You know, Sir, addressing himself to the commissary, you know the civil law better than I do. I submit the case to your consideration.

Mr. Friend then desired the third article in the charge to be read.

The article was read.

' 3d. Also, We article and object to you the aforefaid William Friend, That in the twenty-ninth page of the aforefaid book or pamphlet you have defamed the public liturgy of the established church, by affirming that ' it is very far from the standard of purity in doctrine, which is required in such compositions : ' and we article and object as above.'

Liturgy defamed Sir, I am charged in this article with defaming the publick liturgy of the established church. Defaming the liturgy!—defaming, Sir, is a harsh word—a very harsh word, and ought to have been well considered before it had been applied to any observation, which the authour of Peace and Union makes upon the liturgy. I will beg leave to read the passage, as it stands in the original, not in the garbled and mutilated condition in which the promoter has thought fit to produce it. ' The liturgy of the church of England is a composition derived from the mass-book of Rome, over which, if it has in some respects a manifest superiority, it is very far from that standard of purity in its arrangement, language,

* These papers were afterwards delivered into the vice-chancellor's hands.

or doctrine, which is required from such compositions.' Is then the liturgy a divine or a human composition? If it is a divine composition, to assert that it is the least removed from the standard of purity, would be certainly defamation; but if we allow it to be human, it certainly cannot be defamation to affirm, that it may, nay, by archbishops and Sir, that it must be imperfect. Is the author a sub-promoter. The hour of Peace and Union then the only person who esteems it imperfect? Is it not acknowledged to be imperfect by the wisest and brightest luminaries of the church? I appeal to archbishop Sancroft, who, on account of some imperfections in the burial service, declared, that he could not take upon himself the cure of souls.—I appeal to archbishop Tillotson, who wished the church well rid of the athanasian creed.—I might appeal to the present bishops of London and Ely, who, with several of their brethren, the most respectable of the clergy, had their meetings, to obtain some relief in the present mode of subscribing to the articles and the book of common prayer. Nay, that it is not defamation to suppose the liturgy imperfect, I appeal to one of the sub-promoters, to Mr. Mainwaring, Margaret professor of divinity, who, not many years ago, reprimanded Dr. Pearce, then fellow of St. John's college, for reading the athanasian creed in the chapel, on one of the appointed days*.

* Here Mr. Mainwaring got up in a great passion, and declared, that it was an absolute falsehood; that he did no such thing. Mr. Frend turned to the vice-chancellor, and offered to prove it, but was desired to go on. Mr. Frend has been since informed, that he called Dr. Pearce, master, instead of fellow, and it is supposed, the sub-promoter took advantage of this mistake. But be this as it may, Mr. Frend can produce one of the most respectable members of the university, to attest, that Dr. Pearce related this history to him. Whether Dr. Pearce the master of Jesus college, has belied the lady Margaret's professor, or the lady Margaret's professor has forgotten the heterodoxy of former days, I leave to these two reverend divines to settle in any way they please.

Thus

Defects pointed out. Thus supported, Sir, I should be warranted in saying, that the authour has advanced nothing in the passage quoted but what is strictly true. Let any one examine the book for himself, and he will find the best and finest part of the whole service not free from that imperfection, to which all human works are subject. The psalms, as read in the churches, are miserably defective, —they are worse; they contain sentiments totally repugnant to that charitable and humane spirit, which breathes in every page of the gospel, and is required of every follower of Christ. With what horror must a serious christian revolt from those dreadful execrations, which whole congregations unite in uttering with their mouths, while the sentiment, it is to be hoped, is far from their hearts. Let his wife be a widow, say they, and his children fatherless: let the extortioner consume all that he has: and in the same manner they go on with imprecations, which, if they are pardonable in others, are certainly unbecoming in the devotion of christians. The learned may satisfy themselves that there is an error in the translation: I know it, Sir, the original conveys no such meaning. A jewish congregation would not think itself authorized thus to devote the most depraved of their species to the extreme of human wretchedness.

Instances of imperfection might easily be enumerated, arising from various causes. Some are owing to the language being antiquated. Who would say, now, prevent us, O lord, in all our doings, when he meant to pray for succour or assistance? Why must the people in their addresses to God, be confined to a language, which, in all other cases, would express a sense totally different from their real meaning? It is to the use and the capacities of common congregations, that the common prayer should be adapted. Is it right that the people in their devotions should be left to the alternative of praying for they know not what, or of finding out their own meaning by canons of criticism, or antient glossaries?

King James's opinion. To many similar defects in language, we may add others, from the nature of the arrangement, owing to the liturgy having been taken from the mass-book of Rome, over which indeed the authour of Peace and Union asserts, that it has a manifest superiority. Had he not, however, made such a declaration—had he said, that it was only as good as the mass-book, he would have had royal authority for such an assertion; and he could not have been accused of defamation without impugning the sagacity of one of our wisest monarchs. In the general assembly at Edinburgh, in 1590, king James, afterwards the first of that name in England, gave this as his opinion of our liturgy: ‘As for our neighbour kirk of England, their service is an evil-said mass in english; they want nothing of the mass but the liftings.’

The speaker's opinion.

But, Sir, whatever may be the opinion of crowned heads on this liturgy, I make no scruple of declaring in publick, what I have repeatedly asserted in private, that the liturgy of England is superiour to the liturgies established by publick authority any where in Europe. I have read over many latin, greek, and hebrew liturgies: with them I have compared ours, and it has always been to the advantage of the latter. Not that it should be understood, that every part in the english liturgy is superior to every part in those already mentioned. It would be absurd to suppose, that the psalms, in english frequently mis-translated, are superior to the originals in the hebrew language, or that those parts of our service, which are translated from the greek, are better than the same parts in the greek liturgies; but, on taking the several liturgies together, and considering their various excellencies and defects, the english seems to have an evident superiority.

Not the author's intention to defame.

That it was not the authour's intention to defame the liturgy, is clear, from his

own words in the same page. Does he not point out a mode of improving it, by advising that commissioners of the english church should revise the book of prayers, and propose a form better suited to the present times. Would he have said, better suited to the present times, if he meant to defame? Would he not have said that it was not fit to be used in any times? Again, he says, that the new liturgy should not supersede the one in present use; that no one should be forced to adopt it, but that it should be left to the option of each congregation to use the old or the new liturgy. Is this, Sir, the language of defamation? In recommending improvements to be made in human compositions, there can be no defamation, and this circumstance alone would be sufficient to prove the wickedness and the malice of the promoter, if they were not both apparent in his mode of quoting this obnoxious passage.

Promoter's comprehension, Sir, when the promoter read over this article, I naturally turned to the page quoted, and requested him to point out the passage which I in vain attempted to discover. He was content with saying, that it might be found there; he had left out only a few things from his own inability to understand what they meant. He did not comprehend purity of arrangement. Be it so: Is the promoter's comprehension then to be the criterion of scandal and defamation? What writer can be safe if subject to the limitations of his taste or intellect? He has long ago forgotten those writings which are intended to refine our taste at school and in this place, or a passage from a profane writer of antiquity might have informed him, that

..... Cui lecta poterit erit res
Nec facundia deseret hunc nec lucidus ordo.

How to have been assisted. Rejecting, however, as he does, every thing that favours of heathen lore, he might still have availed himself of the assistance, which would

would readily have been given him by a writer well known for the elegance of his dissertations. That elegansformarum spectator, who sits by him as sub-promoter in this business, would have furnished him with an explanation of the passage, and taught him that purity of arrangement is only another expression for *lucidus ordo**.

Promoter to be indulged, when and where. But the promoter is not only ignorant of the nature of arrangement; he considers purity of language also as an inexplicable idea. From the late specimens, with which he has favoured the world, we are certainly justifiable in allowing this point to him in its full extent. Who that has read his late prolegomena, will impute to him the least acquaintance with purity of language? If he himself was alone concerned, he would have a right, without doubt, to reject, from every pamphlet, the parts which seem to him unintelligible; but, Sir, when he brings forward an accusation, the case is materially altered. Am I to be charged with a crime from his want of comprehension? Will it be allowed in any court of justice to bring forward a passage, garbled in a manner to suit the prosecutor's designs, without any regard to the author's meaning?

Charge invalidated. Sir, I contend that the promoter, by bringing forward a passage in this manner, has rendered his charge futile and ridiculous; it could not be urged in any court of justice; and his attempt to prove me guilty of defamation, falls necessarily to the ground. I request that the fourth article may be read.

Here the fourth article was read.

4th. Also, We article and object to you the aforesaid William Friend, That in a paragraph, contained in pages

* See Mr. Mainwaring's Dissertation prefixed to his sermons.

thirty-six, thirty-seven, and thirty-eight, of the afore-said book or pamphlet, beginning at the words, 'The same passions,' and ending with the words, 'episcopal convocations,' you affirm that the public worship of the great body of christians is idolatrous; including in this charge the members of the church of England, as evidently appears from the context: and we article and object as above.'

Promoter reads Gil Blas. In the former article, Sir, I was accused of defamation: a more heinous offence is now alledged against me; that of calling the worship of the church of England idolatrous. On reading over this charge, I referred to the part of the book on which it is grounded, but after a very exact scrutiny, could not find, to my surprize, the term idolatrous mentioned. Recollecting, however, the character of the promoter, and considering the nature of the books with which he refreshes himself after his feverer studies, I discovered at last what had led him to insert this among his other articles. The promoter, Sir, can now and then in private relax his features, and he is particularly delighted with a celebrated work, with which we are well acquainted—the Memoirs of Gil Blas de Santillane. Meditating one day on this prosecution, he was resolved to imitate the facetious hero of these memoirs, and to try whether he could not play as good a trick on an unfortunate academick, as the merry spaniard had done on a wealthy tradesman. Gil Blas, with his companions, dressed themselves up exactly like the promoter and the managers, and one of them, acting the part of the promoter, preceded the rest, and knocked at a tradesman's door—it was opened by a boy, who, petrified at the sight of the holy inquisitours, in a trembling voice answered the promoter's questions. Does your master love children? Oh! yes, says the boy, yes, my master is very fond of children indeed. Write down that this man seduces children for a sacrifice at the paschal supper. Do you ever eat pork? No, says the boy, I can't

I can't say that we have pork often at our house. Write down that they never eat pork, that he is a jew convict. Pray does your master walk very slowly on Saturdays? Yes, says the boy, my master always walks very slowly indeed. Write down that he sabbatizes, that he never goes beyond a sabbath day's journey on a Saturday.

Borrows one of his tricks.

Pleased with this story, our promoter called together his brother managers, put the book into their hands, and desired them to read the passage quoted in the article. Do you see any thing in this passage, says he, to a gentleman, celebrated for his eloquence? * No; I can't say that I see any thing, except something about the orgies of Bacchus. Orgies of Bacchus! blasphemous wretch! write down idolatrous. Is there any thing else? Yes, says a noted civilian †, here are the rites of the eucharist. Write down immediately, he derides the eucharist. What else is there? The great body of christians, replies a third ‡. Great body of christians! that is the church of England; write down, the church of England is idolatrous. Home went the managers, in amazement at the sagacity of their learned promoter, and as well pleased at this discovery as the spaniards were with the tradesman's ducatoons.

Promoter's shameful conduct.

Sir, the charge of the promoter deserves to be treated in this ludicrous manner, and I should be content with exposing him thus to your derision, if, by an artifice of his, he did not rather merit your contempt than your ridicule. He has quoted the last sentence of a paragraph, and endeavoured to fix on me the charge of comparing together the orgies of Bacchus with the rites of the eucharist. I deny the charge. No such comparison is drawn, nor could it possibly be drawn. I disdain the imputation of having at any time reviled, either by word or deed, any act or institution of my favour. The orgies of Bacchus were contempti-

* Mr. Mansell, † Dr. Jowett. ‡ Mr. Belward.

ble heathen rites, degrading to human nature: the eucharist had the sanction of our saviour's authority, and was calculated to keep in the minds of the early christians the greatest event that had ever taken place in the history of mankind. I despise the one, and I revere the authority of him who instituted the other. Let the promoter continue his daily sacrifices to Bacchus, but let him not impute to me any approbation of them, much less suspect me of making a comparison which I detest and abhor.

A well known truth. Sir, the passage contains no comparison: it affirms a truth, a well known truth, authenticated by the history of all ages. The authour, alluding to the effect of prejudice in a late event* disgraceful to this country, properly remarks, that the same passions produce on certain minds the same effects. It matters not, whether priests affect to be the disciples of a master, who taught nothing but love and benevolence, or are the votaries of a religion replete with impurity, if their minds are the same, and similar occasions offer, the effects produced will be exactly the same. This truth need not be insisted on here; it is exemplified in the whole conduct of the twenty-seven: but, ready as they are to oppose every truth by which their sacerdotal authority is endangered, let them not suppose that this is the case with every priest. There are very many respectable clergymen who feel no such alarms, and could never be prevailed on to unite with the twenty-seven. Why should I point out to the promoter the man whose chair he at present occupies, the bishop of Llandaff, who by his conduct and writings, proves evidently, that he is not among the class of priests alluded to? He would not sacrifice his religion, or oppose the progress of truth, for any base views whatsoever; and I could, if necessary, enumerate many others of the same sentiments, who by their learning and abilities do credit to this university.

* The riots at Birmingham,

But

Promoter's division of christians. But, Sir, to leave this point, which has nothing to do with the charge of calling the church of England idolatrous, let us consider the promoter's division of christians, on which he grounds his opinion that the church of England must be meant by the authour of Peace and Union. Christians, says he, are evidently divided by the authour into three classes, the church of England, the dissenters from it, and a certain body of men called unitarians. How contemptibly ridiculous and absurd this division is, must appear evident to any one who gives himself the trouble of reading the paragraph in question. Besides, what must we think of a professour of divinity, who makes a division, by which he excludes the church of England from being a unitarian church? Is the church of England then not an unitarian church? Does he conceive that his church worships a plurality of gods? For my own part among the various sects of christians with which I have been conversant, I know but of one person, who has expressly denied himself to be an unitarian.

Church of England unitarian. Sir, the church of England will give its sanction to no such sentiment. She will claim her right in spite of the promoter to the title of unitarian, and whatever may be the sentiments of different sects on the subject of the divine unity, they will find it difficult to maintain that she is not a unitarian church. Does not her first article expressly assert the unity of the godhead? and if there is any credit to be given to language, we must on her own claims call her an unitarian church. As a member of that church you, Sir, are an unitarian: all who hear me are unitarians, if they agree with the church in asserting the unity of the godhead.

Promoter's ignorance of church history. But what is the number of the unitarians whether of the church of England, or of the body to which the promoter has

has appropriated this title? Add to them all the dissenters and what proportion do they bear to the christians in Europe? The authour of Peace and Union, talking of the great body of christians, speaks of a body of men, which has for fourteen hundred years maintained opinions nearly subversive of true christianity, Can this be said of the church of England which has not been three centuries in existence? The supposition is absurd, and the division of christians, which the promoter would introduce, proves only his total ignorance of church history.

Nothing about idolatry in the book.

Supposing that the church of England was involved in this remark, and was intended by the term, 'the great body of christians,' how is it charged with idolatry? Sir, you will be astonished, all who hear me will be astonished, when they are told that there is not in the whole pamphlet a single passage, in which the terms idolatry or idolatrous occur. How then can the writer honestly be charged with fixing such an epithet on any sect of christians?

Church of England not idolatrous.

But, Sir, whether, by the great body of christians in the passage alluded to, we are to understand the church of England or not, this I will undertake to assert for myself, and to attest in the most publick manner, that the church of England is not idolatrous. I have never called it idolatrous, nor supposed it to be idolatrous. I totally disavow the charge, and in denying it do repeat, of this charge in particular, that it is false, wicked and malicious*. I request that the fifth article may be read.

Here the fifth article was read.

* The papists worship several created beings, the socinians and the church of England worship only one created being. Mr. Frend disapproves of the worship of these three parties, and worships only the god and father of Jesus Christ.

5th Article.

‘ 5th Article. We article also and object to you the aforesaid William Frend, That in the thirty-ninth page of the aforesaid book or pamphlet, you have asserted, that ‘ ecclesiastical courts, ecclesiastical ranks and titles are all repugnant to the spirit of christianity:’ and we article and object as above.’

Promoter omits ecclesiastical dress. In this article I am charged with saying that ecclesiastical courts, ecclesiastical ranks and titles are all repugnant to the spirit of christianity. On perusing this article and comparing it with the original, the first thing which struck me was the omission of a certain particular, for which I could not at first account: ecclesiastical dress is as much objected to in the pamphlet as ecclesiastical courts and titles. There must be something, I said within myself, extraordinary in this; the promoter has certainly his fears that all is not right about his dress, and that any remarks on this subject must be injurious to his cause. At last I resolved to consult the canons which he has sworn to obey, and I shall now read to you the seventy-fourth, in which decency of apparel is enjoined to ministers.

Canon of the church. ‘ The true, ancient and flourishing churches of Christ being ever desirous that their prelacie and clergie might be had as well in outward reverence as otherwise regarded for the worthinesse of their ministerie, did thinke it fit by a prescript forme of decent and comely apparell to have them knowen to the people, and thereby to receive the honour and estimation due to the especial messengers and ministers of almighty god. Wee therefore following their grave judgement, and the ancient custome of the church of England, and hoping that in time new fanglenesse of apparell in some factious persons will die of itselife, doe constitute and appoint, That the archbishop and bishops shall not intermit to use the accustomed apparell of their degrees.

degrees. Likewise all deanes, masters of colledges, archdeacons and prebendaries in cathedrall and collegiate churches (being priests or deacons) doctors in divinitie, law and phisick, bachellors in divinitie, masters of arts, and bachellors of law, having any ecclesiastical living, shall usually weare gownes with standing collers and sleeves streight at the hands, or wide sleeves, as is used in the universities, with hoods or tippets of silk or farcenet and square caps.'

Vice-chancellor interrupts. Here Mr. Frend was interrupted by the vice-chancellor, who said, surely, Mr. Frend, you do not think that this will be of use to you in your defence. Certainly not, replied Mr. Frend, and went on reading.

'And that all other ministers admitted or to be admitted into that function, shall also usually weare the like apparell as is aforesaid, except tippets only. Wee doe further in like manner ordaine, that all the said ecclesiasticall persons above-mentioned shall usually weare in their journies, cloakes with sleeves, commonly called priests cloakes, without gards, welts, long buttons or cuts. And no ecclesiasticall person shall weare any coife or wrought night-cap, but only plaine night caps of blacke filke, fatten or velvet.'

Vice-chancellor interrupts again. Here the vice-chancellor interrupted Mr. Frend again. What is all this to the purpose, it cannot do you any good. Certainly not, certainly not, Mr. Vice-chancellor, replied Mr. Frend, and continued reading*.

* Mr. Frend was very well persuaded from his knowledge of the vice-chancellor, that nothing but a thunderstorm could have done him any good: but he read this canon to shew the folly of enforcing an old statute, when one of so much later date was so openly violated with impunity in the university.

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‘In all which particulars concerning the apparell here prescribed, our meaning is not to attribute any holinesse or speciall worthinesse to the said garments, but for decencie, gravitie and order, as is before specified. In private houses and in their studies the sayd persons ecclesiasticall may use any comely and schollerlike apparell. Provided that it bee not cut or prickt, and that in publike they goe not in their doublet and hose without coats or cassocks, and also that they weare not any light coloured stockings. Likewise poore beneficed men and curates (not being able to provide themselves long gownes) may goe in short gownes of the fashion afore-sayd.’

Promoter's dress. Such, Sir, is the law of the church with respect to dress, how well it is observed by the promoter is too apparent. So far from obeying it, is he not frequently on horseback in contempt of all ecclesiastical discipline, without the priests cloak to cover his nakedness: nay, have we not seen him here exposing himself in defiance of all decency, in his doublet and hose? Are the sub-promoters more attentive to their priestly apparell? At this very moment I discover among them the indecorous phænomenon of white stockings!* If, Sir, the promoter can thus despise the laws of the church, it is no wonder that he should be fearful of any mention of ecclesiastical dress: but his conduct deserves the severest reprehension, and he, who could undertake such a cause, must be held up as a fit object for derision and ridicule.

Promoter's charge false. I do maintain, Sir, that the charge of the promoter is false. I have never asserted, nor did it ever enter into my mind to assert, that ecclesiastical courts and ecclesiastical ranks and titles are

* Mr. Mansell, the new disciplinarian, was as usual in light-coloured fustians and white stockings.

all repugnant to the spirit of christianity. There are some ranks, titles and courts repugnant; and others not repugnant to the spirit of christianity. The court of inquisition, for instance, is in my opinion of the former sort, wicked and detestable, and all ecclesiastical courts formed on the same principles, deserve the same epithets. Courts, where the judge is determined to condemn, where he does not sit to investigate, but to harass the accused by every means he can possibly devise. Again there are ranks and titles repugnant to the spirit of christianity: that of pope is of this nature, and every title or rank derived from him, by which he or his adherents claim a power over the people not authorized by the laws of the country, or the precepts of the christian religion.

On the other hand there are ranks, titles and courts, by no means repugnant to the spirit of christianity. Such for example, were the titles of episcopoi, presbuteroi, diaconoi, of the early christians; such their courts for the correction of morals and the infliction, if necessary, of the punishment of excommunication.

Promoter's mode of quotation, But, Sir, the authour of Peace and Union no where makes the general proposition laid down by the promoter, who has taken an unwarrantable liberty in misquoting and misrepresenting a passage. It is in the recollection of the court, that, when this article was read, the promoter asserted, that the words quoted by him were exactly the same as a sentence in the book, excepting only an omission and an insertion. To be sure it is perfectly justifiable to omit and insert at pleasure, but such liberties, though they may suit the promoter's purposes, totally destroy the meaning of a writer. Sir, by the same mode of garbling and mutilating sentences the sacred scriptures might be quoted as containing the most horrid

horrid blasphemies, and it would be easy to convict the bible of atheism. In one part we read this general proposition, there is no god: it is positively affirmed that there is no god, but shall we rest our faith upon this article? Shall we, like the promoter, indulge in omissions and forget a very material part of the verse; it is the fool who uses this language: the fool hath said in his heart, there is no god?

Recommends a hal-
lucination to himself.

Again we read in another part of our bible, that an eminent leader of a faction, having been over-ruled in the cabinet of a rebellious son, went home and hanged himself: and in another place it is said, go thou and do likewise. Will the promoter be satisfied with scriptural authority? Shall I be authorized in giving him this advice: Achitophel went home and hanged himself: go thou and do likewise? The promoter will omit, insert, derange, confound, to injure another man; but, when his own principles are brought home to himself, and supported too with scriptural authority, he keeps his place with the utmost tranquillity.

Vice-chancellor in-
terrupts.

Here the vice-chancellor interposed. I do not see how this applies to your case.

Meaning of the pas-
sage restored.

It applies, Sir, thus; it proves that the danger and injustice of quoting authorities imperfectly and detaching passages from the context of any writing is such, that by these means any author may be represented as asserting things totally different from and absolutely contrary to his express and plain meaning. In the instance now before you the promoter, by leaving out the word, 'Hence' and inserting the word 'are,' has converted into a general and absolute assertion, what is only true when restrained to the conditions of the preceding paragraph. Hence, says the
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author,

authour, hence, namely as it is said in the preceding paragraph, from the people being prevented from interfering in ecclesiastical concerns, are derived those courts, ranks, and titles, which are all repugnant to the spirit of christianity. And when did this first take place? when the love of pre-eminence began to bear sway over the minds of the clergy, that is, as it is said in page 36, fourteen hundred years ago. From that time, from the council of Nice, the great body of christians has been under this delusion; the clergy in the greater part of the world think themselves superiour to the people, arrogate to themselves unbounded power, separate themselves from the laity, and bind themselves by vows to obey a foreign prelate. This is universally true of the catholic world, but it is certainly not true in the whole or in part in all protestant countries. I must therefore conclude this article by observing, that the promoter, in his usual way, has misquoted the authour of Peace and Union, and laid to my charge the maintaining of a general proposition concerning courts, ranks and titles, which I utterly disavow: and by acting in this manner he has given me another opportunity of shewing, that his charges against me are false, wicked, and malicious. I beg that the sixth article may be read.

Here the sixth article was read,

‘ 6th Article. We article and object to you the aforesaid William Friend, That you have profanely reviled and ridiculed the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers, in the following passage contained in the thirty ninth and fortieth pages of the aforesaid book or pamphlet, (that is to say) ‘ The laity, like brute beasts, sit tamely under this usurpation: a man, if a priest or minister enters, is not master of his own house; he must not thank God for the blessings of providence at his own table;

table; he cannot pledge his faith to a lovely woman without the intereference of the priest; his offspring must be sprinkled by sacred hands, and at death he is not committed to his long home without another incantation,

‘These superstitious prejudices are, without doubt, highly beneficial to the interest of the clerical community; but the morals of neither party are consulted. The laity are apt to imagine that there are some practices in which they may be indulged without any imputation on their christian character; and the gentleman in black is supposed to put on a particular set of features and behaviour with his clothes.’ and we article as above.’

An accusation without support.

In this article I am accused of having profanely reviled and ridiculed the most sacred offices of the church, and from the peculiar emphasis with which the promoter repeated from the pamphlet the passage on which this charge was founded, it was easy to see that here lay the chief strength of the accusation; and it was naturally to be expected that he should support this assertion with a clearness and force of argument proportioned to the stress which he laid upon it. But, behold, instead of proving or attempting to prove a single syllable in the article, he fairly deserted the point, and left to the court to make out what he felt it impossible to prove. Thus were my judges converted into accusers, and I was left without knowing in what manner or to what I should reply.

The promoter dreams. I might indeed imitate his silence from the full persuasion, that a reader of the book would find it difficult to discover, on what principle the promoter has grounded his assertion. Surely it became him to shew, what were those offices of the church which he called not barely sacred, but most sacred, and which I
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am represented as having profanely reviled and ridiculed. For my own part I never heard, that there was an office prescribing the mode of thanking god for the blessings of providence at table; and I never read one in the common book of prayer for sprinkling a man's offspring by sacred hands: and, as the promoter has not chosen to specify any office, we may safely conclude that he labours under some error, and that he has dreamed of an attack on offices which exist only in his own imagination.

Rites of the church of England. But as he has chosen to accuse me of reviling sacred offices, it is incumbent on me to consider two things, the rites themselves, and the persons by whom the rites are performed.

With respect to the rites of the church of England, I feel no difficulty in delivering my sentiments upon them, from which it will evidently appear that I could not wish to revile them. They seem to me in general very decent and solemn, fit to excite among the members of the church devotional sentiments. The services are drawn up in a strain of piety, which would do credit to any church, and however exceptionable some offices may appear to the most eminent among the dignified clergy, they do not deserve to be reviled or to be treated with ridicule.

Clergymen not usurpers. In considering the pre-eminence assumed by priests as a body above the laity, the authour of Peace and Union has properly called it an usurpation: But do the ministers of the english church usurp an authority over the laity? They perform offices as ministers of the state, as servants to the country. They are appointed to their posts like other civil officers, acknowledge themselves obedient in all things to the first magistrate, are not a separate order
from

from the people, but perform services only as they are enacted by parliament. Is not this, Sir, the language of the pamphlet? and is it not extraordinary that a writer should be charged with imputing that to the church of England, which he had expressly denied to belong to it?

Rites of the church of Rome. The contrary of all this is true in the church of Rome, whose rites seem more like heathenish incantations than the decent services of a christian community. Let any one compare together the ceremonies used in the romish church at a marriage or a burial with the corresponding ones in the church of England, and he will not hesitate to use the language of the authour of Peace and Union with respect to the former, which he would think totally inapplicable to the latter. But the promoter is unfortunately unacquainted with the rites of any church except his own; and, as he saw an allusion was made in the english language to matrimony and burial, he concluded that the writer must necessarily allude to the ceremonies of his own church; not considering that other countries use certain ceremonies on those occasions, and that the description of them, if applied to his own church, would appear very erroneous, if not ridiculous.

Popish priests usurpers. Again, the persons who perform these offices in the romish church do usurp an authority over the people, and the laity, like brute beasts, do sit tamely under this usurpation. They keep themselves apart from the people, and countenance a variety of prejudices by way of encreasing their spiritual domination.

Prejudice in favour of a clergy superstitious. These superstitious prejudices, the writer of 'Peace and Union' says, very properly, are beneficial to the interests of the clerical community,

munity, and it is right to observe that, though all prejudice is hurtful, some are more so than others, and deserve particularly to be called superstitious. The prejudice for example in favour of a clergy is superstitious, if founded on some mistaken notions of a separate order being spoken of in the new testament as more sacred than the rest: if the priests are conceived to approach nearer to the divinity, to have a peculiar character of sanctity, and to be entitled to a particular kind of reverence, not owing to merit or ability; but to some gifts bestowed on them on their entrance into the order. The respect paid to ministers in a protestant community ought to be of a different nature. In England they are considered as employed in certain duties by the state, and according to their behaviour in the performance of those duties, they will be respected or neglected.

Rites of the church not reviled, There are no rites, Sir, of the church of England reviled in this passage, nor does the writer seem to have any objection to the performance of them by its ministers. The same line must be drawn in this as in the last article: the whole evidently belongs to the great body of christians which has for fourteen hundred years swerved very widely from the truth of christianity.

Nor protestant ministers. That the authour could not mean to involve in one common censure the ministers of protestant churches, appears from his words in pages twenty-eight and forty-one. In the former he recommends a provision to be made for the clergy, and that the profession should possess such emoluments, as may render it a proper pursuit for men of liberal education. In the latter he declares, that, from the profession of a teacher of christianity, respect ought not to be withheld. This, Sir, would not be said by one who wished to revile the rites or the members of any church, and the
misapprehension

misapprehension of the learned promoter arose solely from his unwearied employment in other pursuits, and his total ignorance of every thing relating to theology and church history.

Having thus, Sir, made some general remarks on the four articles in which I am accused of impugning religion as established by publick authority, I shall now read to you my answer to each charge in particular, as it is drawn up for the future inspection of the court.

Here Mr. Frend read the following paper :

ANSWER to ARTICLE the THIRD.

No defamation in calling the liturgy imperfect ;

THE liturgy of the church of England, being confessedly an uninspired composition, it will appear to many not scandalous, to say, that it must be imperfect ; ‘ nor is it a crime in any one to point out its blemishes in order to its amendment.’ Having been at first distributed into distinct and separate services, it will appear to many no disparagement to say, that it must have suffered considerably with respect to its original arrangement, by the combination of these several services into one. Having moreover been set forth at a time, when the english language was comparatively rude, it will appear to many no profanation to suppose, that both in meaning, and stile, it may correspond but little with our conceptions ; that in fact instances do occur, in which words are used in a sense very different from the popular meaning annexed to them, and that in some prayers, as Mr. Archdeacon Paley expresses himself, ‘ the stile is ill according with that annihilation of human greatness, of which every act that carries the mind to God presents the idea.’ Having, lastly, been composed by persons, whose religious opinions upon some

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important

important articles, especially those of the quinquarticular controversy, were not exactly the same with those maintained by the body of the english clergy, for above the century last past, many may think it no defamation to say, that in respect to doctrine, it is very far from that standard of purity, which is required in such compositions.

Archbishops have
thought it imperfect.

Such persons would justify themselves by the authority of the brightest luminaries of the english church: by that of archbishop Tillotson, who wished the church fairly rid of the athanasian creed; by that of archbishop Sancroft, who declared, that he was so little satisfied with the burial office, that, for that very reason, he had never taken a cure of souls; by the authority of doctours Bennet and Stebbing, whose opinions on the burials of the dead, and the visitation of the sick, are well known; by the authority, lastly, of Dr. Porteus, the present bishop of London, Dr. Yorke, the present bishop of Ely, archdeacon Paley, and a numerous body of respectable clergymen, who, either by their publications, or their signatures, have declared, that the liturgy is susceptible, and stands in need of improvement.

How defamed by the
authour.

But the charge objected to me is that of defaming the publick liturgy of the established church. I ask the promoter how? the answer I receive from him is, by affirming, that it is very far from the standard of purity in doctrine, which is required in such compositions. But, has the authour any where asserted this, or this only? Is it not said in the pamphlet, that the liturgy of the church of England is very far from that standard of purity in its arrangement, language, or doctrine, and not in its doctrines only? Is it the same thing to assert, that a liturgy, or any other composition considered in three respects, is far from the
standard

standard of purity, as to say, that it is very far from that standard in one only: that can only be true, on the supposition, that a fault in either of the other respects is impossible.

Promoter's reasoning. To prove the contrary, the promoter must argue in the following manner: The liturgy of the church of England you affirm to be very far from the standard of purity in arrangement, language, or doctrine, which is required in such composition. But, with respect to its arrangement and language, there is no deviation from that standard; therefore, you are rightly charged, with affirming that it is very far from that standard in point of doctrine. But, without having recourse to particular instances, can the promoter support the minor proposition, without denying the liturgy to be of human original? Having indulged himself with a fling at his orthodox brethren, by treating in his late prolegomena their opinion of the inspiration of the evangelists, as a vulgar error, does he mean to atone for it, by maintaining the inspiration of the compilers of the liturgy? But further to establish the truth of the distinction, on the ground of which I build my defence, I beg leave to illustrate it by two suppositions.

Proved false in two instances.

Suppose first, that a person, speaking of the vice-chancellor, or any other publick magistrate, should say, that his conduct had been very faulty, in taking notice of some offences, too little or too much of others, could be charged with saying, that the vice-chancellor had been very faulty, in taking too much notice of some offences, till it had been proved, that he had been no way faulty, in taking no notice, or too little, of others. The promoter has lately published, under the patronage of the university, a transcript of the manuscript copy of the four gospels, and acts of the apostles, with a preface contrary to the advice of a learned mem-

ber of this university. Now, should I affirm of this preface, that it is very faulty with respect to the words employed, the sense in which they are used, or their arrangement, could I be charged with affirming, that it was very faulty in the latter instance, unless no faults could be, or had been produced in the two former? It is as unnecessary for me to produce any such instances, as it was to produce any in the former case, in which the vice-chancellor had taken no notice, or too little, of any offences; but, if I could bring myself to cite and examine words and phrases, with as little delicacy, as the promoter has cited and examined witnesses, I should not despair of equal success.

His charge a direct falsehood.

I have thus shewn, to the full satisfaction of every one here present, that this charge against me is founded on a direct falsehood, and that it derives its whole appearance of truth from an artifice, that would disgrace an accuser in the most ordinary courts of justice. What effect it ought to have upon the character of a doctor in divinity, accusing before the university, I leave to the determination of the court.

ANSWER to ARTICLE the FOURTH.

The term idolatrous not in the book.

THE fourth charge, exhibited against me, is that of calling the worship of the church of England idolatrous: but this can only be added for the sake of multiplying articles, and of introducing an odious term. For, if the promoter could have proved me guilty of calling the liturgy idolatrous, would he have thought it worth his while, to accuse me of saying, and that too by a plain perversion of my meaning, that it was very far from the standard of purity in doctrine? No! no more than any other promoter, ecclesiastical or civil, would aim at proving one guilty of some
small

small offence, whom he was sure of convicting of the greatest. The proof of this charge is, that the church of England is included, in what is said of the great body of christians in the romish church, as appears by the context, to the promoter at least, who wishes to be thought very quick-sighted in the discovery of heresy and hereticks. Be it so; and is the worship of those churches called idolatrous? No! not expressly; How then can that of the church of England be so called, even though it were included in the same language?

*Promoter's absurd
division of christians.*

But the promoter, by a very unaccountable misapprehension, unless it may be imputed to a desire of finding fault, supposes me not to speak of four different parties of christians, namely, unitarian believers, dissenters from the established church, and the members of the churches of England and Rome; but of the three former only, and by the great body of christians, are meant the members of the church of England and english dissenters. But who, that is acquainted with the present state of christianity, could think of calling those two parties, the great body of christians; or, on that supposition, what can be meant by the reference to the church of Rome in the same page; or to the admonition given to churchmen and dissenters, at the conclusion of the paragraph quoted in the charge? 'Let churchmen and dissenters examine seriously, how far they have deviated from the true faith, and as they reject many points, established by the councils of the romish church, let them expunge every thing, which, favouring of its leaven, is to be found in presbyterian synods, or episcopal convocations.'

*Idolatry a term
improperly used.*

To speak the truth, the charge of idolatry has been too frequently brought by one body of christians against another; all protestants have united in charging the church of Rome with it; and some

some dissenters have brought the same charge against the church of England. For my own part, though what has been said is sufficient to refute the charge, I must here declare, that I have frequently expressed, and do now express a disapprobation of this language, used towards the church of England. I speak this with greater confidence, as, on a conference, in which my opinion was asked with respect to the use of this term, as applied to the church of England, I expressed, as I do now, my entire disapprobation of it, and declared my name must be withdrawn from the society, of which I was then a member, if that term were permitted to remain in the declaration of the sentiments of the society.

Promoter guilty of falsehood. The promoter, therefore, is guilty of a falsehood, in asserting that the church of England is called idolatrous in the pamphlet in question: and of a wicked calumny, in objecting to me an opinion, which I utterly disavow.

Promoter's incapacity. His assertion, that by the great body of christians were meant the members of the church of England and the dissenters, is another proof of his inability to understand a plain sentence in the english language. By the great body of christians, is evidently meant that body of men, which, for the last fourteen hundred years, has maintained, as is asserted in page thirty-six, opinions nearly subversive of all true religion.

ANSWER to ARTICLE the FIFTH.

The charge a vile calumny. TO assert that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, is both absurd, and contrary to several passages and expressions in the bible. The

The words *ἐπισκοποι, πρεσβυτεροι, διακονοι*, commonly translated bishops, priests, and deacons, are expressive of ranks and titles in apostolical churches; and St. Paul himself not only authorizes, but advises the sentence of excommunication to be passed upon a delinquent in the church of Corinth. Therefore, since my accuser declares me to have asserted, that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, he declares me to have asserted a thing contrary to that scripture, which I have always professed, and do profess, to make the ground of my belief and conduct; and this his declaration, unless substantiated by irrefragable arguments, can be considered only as a vile and malevolent calumny. Now so far from asserting, that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, I do here profess and declare, that they are both consonant with the spirit of christianity, and were, and may still be highly useful institutions.

Promoter's unjustifiable conduct.

Does the authour of the pamphlet, say, that these courts, ranks and titles, are all repugnant to the spirit of christianity? my accuser has in quoting this passage taken more than one liberty, that is unjustifiable. In the first place, the word *are* is put in, by himself. The passage, as quoted by him without this word, is, 'ecclesiastical courts, ecclesiastical ranks and titles, all repugnant to the spirit of christianity.' The accuser justly considering within himself, that such a passage would not suit his purpose, put in the word *are*; and a change is made, which cannot escape the notice of an unprejudiced observer. The insertion of a word is not the only crime, of which this learned doctour is guilty. In the second place, perceiving that the sentence must, from the context, appear absurd, unless the word *hence* were removed, he, by boldly striking it out, destroyed the whole meaning of the passage. Thus, by these

these two changes, I am supposed to assert a thing totally contrary to my own principles.

Plain sense of the passage. The fact is, that by taking the passage as it is in the original, the sense is plain, obvious, and corresponding with the passages preceding and succeeding. The clergy, i. e. of the great body of christians above mentioned, are said to affect a superiority, and to prevent the interference of the people in ecclesiastical concerns. Hence, says the authour, hence, namely, from this affectation of superiority, and from the destruction of the just rights of the people, have proceeded, at different times, and in different countries, courts like those of the spanish inquisition, and ranks and titles under the bishop of Rome, all repugnant to the spirit of christianity. The passage, as connected with the context, contains a plain and well-known truth; but my accuser has made it contain an absolute falsehood, by the omission of one word, and the insertion of another.

Defendant's opinion. I do still farther declare and avow it, as my deliberate opinion, that every church in this and all other countries, is justified in instituting any court, rank, or title, which it thinks expedient for the better regulation of its religious concerns: provided that it does not interfere with the rights of christians, and acts according to the rule of the apostle, Let all things be done decently and in order.

I have thus far given myself the trouble of confuting the promoter's charge; but it was unnecessary for me to do so, since the garbled manner in which the passage is produced, both from omission and insertion, have made void the whole of that article, and rendered it incapable of being submitted to any judge either in law or equity.

ANSWER

ANSWER to ARTICLE the SIXTH.

No sacred offices specified. IN this article, I am charged with profaning and ridiculing the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers; and it is left to me to find out, what sacred offices of the church of England are meant, and why they are called most sacred. In the first sentence of the passage quoted, it is said, that the laity, like brute beasts, sit tamely under this usurpation. Surely, to a man not blinded with prejudice and passion, this sentence must have been a clue to what follows. Are the laity of England like brute beasts? Do they sit tamely under clerical usurpation? The authour of Peace and Union has expressly asserted the contrary in page twenty-five; and englishmen have certainly got rid of the folly which prevailed in this country three hundred years ago, and will not sit tamely under the vile dominion of any priest.

Nor most sacred alluded to. But it may be said, that, in the next passages, the most sacred offices of the church of England are meant. Let any one read over the liturgy attentively, and point out one office there, relating, either to the thanking of God for the blessings of providence at table, or the sprinkling of persons by sacred hands, and I will answer to the charge. There are two offices in it called matrimony and the burial of the dead, but these surely cannot be called the most sacred offices; to which there may seem a reference in the words, he cannot pledge his faith to a lovely woman without the interference of a priest, and at death he is not committed to his long home without another spiritual incantation.

Authour well acquainted with the rites of the romish church.

On reading over the passage above-mentioned, I should conclude at once, that the authour was well acquainted with the ceremonies of the romish church. He mentions the term sprinkling with sacred hands, and the burial of a person with another spiritual incantation. By using the word *another*, it is evident, that the authour had in his view an incantation, applicable to some one of the other ceremonies mentioned, and, before he is charged with an improper sense in the use of that term, it is incumbent on the accuser, to make himself well acquainted with the meaning of words, and to beware of appropriating a sense to them which they evidently will not bear.

Meaning of incantation.

By incantation is necessarily meant some charm uttered by singing or chaunting, which was supposed to have influence over the devil or other evil spirits, or to use the words of Lord Chief Justice Coke (3 Inst. p. 44.) as quoted by the Lady Margaret's professor, an inchanter or incantatour is he or she, qui carminibus aut cantilenis dæmonem adjurat; and from reading the liturgies of the church of Rome, and from observing many of its services, I think myself justified in saying, that the word incantation is strictly applicable to the church of Rome, and totally inapplicable to the church of England.

Where used.

Incantation is applicable to the form of words, accompanying the sprinkling used in catholic countries, and this ceremony is performed in the following manner. The priest breathes over the water, and says first: Exsufflo te, immundissime spiritus, in nomine domini nostri Jesu Christi. He then uses this exorcism: Exorcizo te, creatura aquæ, in nomine Dei patris omnipotentis, et in nomine Jesu Christi, filii ejus, et spiritus sancti, si quod phantasma, si qua virtus inimici, si qua incurisq

incurfio diaboli, eradicare et effugare ab hac creatura aquæ, ut fiat fons aquæ falientis in vitam eternam. It will not be neceffary to read the whole office, nor to describe the various incantations ufed in the confecration of holy water. Incantation is alfo applicablè to the burial of the dead in thofe countries, for with this enchanted water the dead body is repeatedly fprinkled, as is evident from thefe words, taken from a catholick liturgy, in which every thing wears the afpect of magick and necromancy, to ufe the language of Dr. Bentley, rather than of a christian rite. *Collocabunt corpus fic indutum, vel fuper menfam aliquam, vel in terra, loco decenti, fuper aliquod fragulum aut tapete, et ad pedes caputve femper candelam accenfam habebunt: parva item aliqua crux fuper pectus et inter manus defuncti ponatur, aut, ubi crux defit, manus in modum crucis componantur. Sæpe etiam afpergatur corpus aqua benedicta.* In describing the proceffion to the houfe of the deceased, it is ordered to be made prælata crucè, et afperforio, cum aqua benedicta in vafculo. The body of the deceased and bedchamber are to be fprinkled. In the church facerdos accipit afperforium de manu ministri, et afpergit corpus defuncti, diacono post eum incenfante. The fprinklings, genuflexions, fignings with a crofs, incense burnings, and various other ceremonies, accompanied the whole time with a particular kind of chant, are well known to any perfon, who has travelled, or made any enquiries into the religious rites of popifh countries. The fprinkling of the offspring, and the fprinkling of the dead body is performed by a particular inftrument, with which when in catholick countries, I have been repeatedly fprinkled myfelf: it is called afperforium & afpergillum.

No profanation or
ridicule in the pas-
fage.

In the paffage quoted, there is neither
profanation nor ridicule: facts are plainly
and clearly ftated, which take place in by far the greater

part of the christian world. The laity in most places sit tamely under the abominable and disgraceful usurpation of the vilest men under the denomination of priests. Let the promoter travel through the greater part of Europe, all Asia, and Africa, where there are christians, and the greater part of America, and he may be a witness to every practice, mentioned in this obnoxious passage: but surely, it is unbecoming his character, unbecoming the office, he bears among us, to shew such a total ignorance of the state of christianity in the world, as to suppose, that those superstitious practices, which are known to belong to others, can be imputed to his own church, and which not only his own church expressly reprobates, but with which the accused person cannot be proved to have ever charged it.

Superstitious prejudices to whom beneficial. These superstitious prejudices, it is said, are without doubt highly beneficial to the interests of the clerical community. If this were the case in England, the promoter could easily find out the benefit derived, or supposed to be derived by the clergy, from these practices; but as he cannot do this, and on the other hand, the benefits derived from them by the popish clergy, are innumerable, he is convicted again, of giving a meaning to a passage, which it does not bear upon a fair construction.

Whose morals are hurt. The morals of neither party, it is said, are consulted; certainly they are not in the greater part of the christian world: for, where the priests have the superiority, lust, ambition, passion, inordinate desire, and every other vice, necessarily consequent to the vows they have taken, and under which they are supposed to live, reign uncontrouled, and the people of both sexes, by being kept in ignorance, and made subservient to the views of the priests, grow callous to the impressions of virtue, and are notorious for a degradation of character,

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Wickliffe's opinion. The people, it is said, think themselves permitted to indulge in these vices. To prove this, it is necessary only to make enquiries from any persons, who have travelled, and they will give sufficient proofs, that the people do think themselves authorized to live in the commission of many vices, or at least, from the facility of absolution, make no scruple of living in the habitual indulgence of them. This is no new complaint; Wickliffe used to say above 400 years ago 'that he was not fond of applying the words, church and churchmen, merely to the clergy. As these often were men of bad lives, he thought such an application, a vile prostitution of those sacred names. Besides, it had a bad influence, he thought, upon the laity: seeming to exclude them from Christ's church, and to give them a dispensation for licentious practices. If they were not of Christ's church, they were not under Christ's laws. He therefore would never have any idea fixed to the word *church*, but that of the whole body of christians.'

Clergymen not more sacred than officers of the army and navy. The gentleman in black is supposed to put on a particular set of features with his cloathes. It would be endless to quote passages from ancient or modern authours, which describe the state of the clergy abroad: the vows, which they are under, necessarily place them in a different situation from other men, and from these vows, they are expected by the people, who know not the nature of our frame, to be so. I have read much on, and been eye witness to their conduct, but he must be lost to all sense of shame, who either compares, or declares, that I have compared the clergy of England, with those on the continent, with a view of attributing to the former the vices and behaviour which belong to the latter. In England they are citizens, on the contrary abroad, they are not so; and it is properly observed in page 43, of the pamphlet in question, that, could the clergy of France have submitted

submitted to become citizens, they might still have been in possession of wealth and influence. For my own part I consider, and am authorized by the canons of the church and by acts of parliament, in considering the clergy, like the army and navy, as a political body of men, of servants to the state, whose head is the same as the head of the army and navy, the sovereign of these realms. As their conduct with respect to the instruction of the people, and the conducting of the publick worship is regulated by the civil power, the body is political, not spiritual. And, if any one says here, that the clergy are not in this predicament, which is a very different one from that of the romish clergy, and should act upon this opinion, by withdrawing them from the allegiance, due to the king, and impressing them with notions, that they are a body of men independant of the state, I do not scruple to say, that he betrays his ignorance of our laws, and is an enemy to his country.

Promoter's mistake. On the whole then, it does not appear, that any sacred office, much less the most sacred offices of the church of England, are profanely reviled, or ridiculed, or even alluded to. The promoter was not aware, that the passage in question, as I have before hinted, is connected with what goes before in page 36. 'For these last fourteen hundred years, the world has been under the influence of two opinions, nearly subversive of all true religion.' Under the second opinion, namely, the love of pre-eminence, come the observations, that the promoter has made a part of his charge, forgetting, that the church of England is not 300 years old, that at the reformation the pre-eminence of the ecclesiastical state was abolished, that the church of England derives its existence and authority from an act of parliament, and that its existence and authority may in a moment be as easily taken away, as it was given, by an act of parliament.

Though

Defendant's opinion. Though this explanation is sufficient to refute the absurdity of the charge made against me, I think it necessary to give my own opinion of the sacred or most sacred offices of the church of England, as performed by its ministers. They appear to me in general to be drawn up with a true devotional spirit, proper to impress the minds of the members of that church, with sentiments of religion and piety*.

W. F R E N D .

Mr. Frend having finished this summary, desired that the eighth article might be read.

'8th Article. We article and object to you the aforesaid William Frend, That by the laws and statutes of this university, particularly by the forty-fifth statute, intitled, 'De Concionibus:' and by a decree passed in the senate of this university, on the ninth day of June, one thousand six hundred and three, it is ordained and provided, That all and every person or persons impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may and ought to be proceeded against, and punished by suspension from academical degrees, by expulsion or by banishment: and we article and object as above.'

Grace book called for. This article having been read, Mr. Frend requested that the grace of 1603 might be read, and on the printed statute book being produced, Mr. Frend objected, and desired that it might be read from the original grace book. The registry replied that it was not in court; it was in his office. Mr. Frend persisted in desiring it to be produced. The vice-chancellor

* This paper was afterwards delivered into the vice-chancellor's hands.

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celler on this, said: I suppose, Mr. Friend, it is not very material, you do not wish to give the registry the trouble of going out of court for it. Mr. Friend replied: Sir, I must. I have reasons why I conceive the production of the original very material. The office is not far off, and as I feel myself rather fatigued, this little delay will be some relief to me.

Grace not to be found. Upon this the registry went out of court, and returned in about ten minutes with the original grace-book. Mr. Friend then desired that the grace of 1603 might be read, and after some pause the vice-chancellor replied that it was not to be found. Mr. Friend rose and spoke with some degree of warmth.

No, Sir, it is not to be found. The grace of 1603 is not in those books. It is not in the place which could alone give it a statutable existence. This grace, on which so much has been said, which is to be held out in terrorem to academicks, appears to be a non entity, a phantom. When brought to the test it vanishes into air.

Promoter lost to all sense of decency. Surely, Sir, the promoter must be lost to all sense of decency, who could thus trifle with the court, and charge a man with a variety of crimes against a grace, which as a law existed only in his own imagination. Is not this an instance of the most scandalous effrontery? Not content with the statute de concionibus, which cannot be brought forward in this court, he was resolved to shew his skill and his malignity still farther, by endeavouring to condemn me on a suppositious law. Is it not, Sir, unaccountable, that at the end of the eighteenth century a member of this university, a doctour in divinity, could thus stand forward as a promoter in so nefarious a cause? It is now a hundred and ninety years since the grace is supposed to have passed,

passed, and within that length of time not a single person is to be found on record charged with a breach of it. Am I to be the first person to feel the effects of a grace, which, if it had ever passed, must be well known to have been the produce of troublesome times full of bigotry, and religious infatuation? But it is needless to argue longer on this subject: the grace is not to be found, it has no legal existence, it is not in the records of the university, no proof can be brought of any one suffering under its penalties, it is ——— (here the vice-chancellor interrupted Mr. Frend by observing that, though it was not in the grace-book, it was in the vice-chancellor's book; on which Mr. Frend changed his discourse, and addressed him thus):

Grace in the vice-chancellor's book. I thank you, Mr. Vice-chancellor, for reminding me of a circumstance which I might otherwise have forgotten. The grace is certainly in the vice-chancellor's book, and from thence it was copied into the book of statutes. But, Sir, from its being in the vice-chancellor's book it does not follow that it is a grace of the university. On the contrary there is full and sufficient proof, that, at the time when this book was written, there was no proof of the legal existence of the grace.

But without attestation. Sir, it is usual to attest that a copy of a grace agrees with the original. Of this you will find in the vice-chancellor's book frequent instances, and the registry of those times naturally made use of the common formula. Under the grace you will find this attestation, concluding with the words, Ita testor. The registry had been copying the grace, it might be from some printed book, and not having any doubts of its authenticity wrote down the usual words, Ita testor. Thus it remains, Ita testor. Ita testor! who testifies? The registry was too honest a man to put his
X name

name down without an actual inspection of the original; he searched for this original, and not finding it left the grace in the vice-chancellor's book in the present imperfect condition. There is indeed Ita testor, but no name or signature follows. As the grace could not be found in those days—as it is not to be found at present—as there is no record whatever of any trial under it—as it is now a hundred and ninety years since it was passed—I am released entirely from the necessity of giving it any farther consideration. I cannot examine whether the supposed crimes of which I am accused, come under this supposed grace or not; but I must leave the court under this conviction, that no man but the present promoter could have so degraded himself in the eyes of the university, and of all honest men, as to appear thus in a public court, to enforce what at best would have been considered only as an obsolete statute, and is now proved to be of no validity.

Heads of colleges
defended.

Having thus, Sir, freed myself entirely from one part of this article, I may be expected to examine what can be urged against me under the statute de concionibus; but I have already made my objections to the application of this statute in the present court. I have protested against it as totally contrary to the forms of our law, and the privileges of the university. The promoter, fearful that his tricks should be found out, resolved to secure me by a statute, which differs materially from the grace: but I stand here, Sir, to be tried by the laws of the university. I am not only to defend myself, but the rights of every member of the senate. I stand here to vindicate the authority of the heads of colleges, which this promoter is endeavouring to undermine. Yes, gentlemen, I will vindicate your authority. I contend, that no man can be tried in this court under the statute de concionibus. It would be an insult to you, to answer any charge here on this statute. You, gentlemen,

lemen, conjointly with the vice-chancellor, are in the proper place the judges of every offence committed against it. I shall always stand up for your legal authority, and will support it, whilst this promoter, lost to all sense of duty and decorum, insults every one of you. He insults every head of a house by this contemptuous mode of proceeding. Not content with treating the university with the utmost contempt, he aims a blow at the power of its heads. By presuming to interfere with the execution of this statute, he reproaches you with neglect in matters, which are trusted solely to your vigilance: and, in pursuing his own ridiculous purpose, he has no regard for the existence of laws, nor for the characters of those persons, in whom, by our statutes, the execution of them is vested. Gentlemen, if I am ever accused before you on matters, of which you have the statutable cognisance, I know how to submit; but I am an englishman as well as a master of arts of this university, and I do maintain, that every right of englishmen and academicks has been violated in this trial.

It is needless, Mr. Vice-chancellor, to prosecute this subject farther. I shall, in few words, read my answer to this article, to be hereafter submitted to your perusal.

Here Mr. Friend read the following paper:

Defence of this article unnecessary. I now flatter myself with having effectually demonstrated, that the several charges brought against me, whether I am the authour of the pamphlet or not, are entirely without foundations that I have not impugned religion as established in this kingdom, nor all ecclesiastical ranks and dignities; have not defamed the liturgy, stiled the publick worship idolatrous, nor profanely derided the most sacred services of the church. And here I might stop, as having no concern in what is farther objected to me by the promoter,

in the eighth article, in which he says, that by the laws and statutes of this university, particularly by the forty-fifth statute, intituled, 'De concionibus:' and by a decree passed in the senate of this university on the ninth day of June, one thousand six hundred and three, it is ordained and provided, that all and every person or persons impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may and ought to be proceeded against, and punished by suspension from academical degrees, by expulsion, or by banishment.

Reasons for the non-
existence of the grace. But, for the sake of shewing, that, though any or all of these charges should be thought to remain in full force against me, I have not thereby incurred any penalty, the infliction of which is intrusted to this court, I shall offer some things on one of the laws specified therein, namely, the decree passed in the senate of the university, in the year 1603, reserving what I have to say on the statute de concionibus, till I am called by the vice-chancellor, and the greater part of the heads of colleges, errorem et temeritatem meam revocare, et publice confiteri; and dismissing all other laws and statutes, not particularly pointed out, with this general observation, de non apparentibus et non existentibus eadem est ratio. The supposed decree of 1603, which is printed from a copy of the statutes, formerly kept by the vice-chancellor, is not extant in the only authentick repository of law, the register of the university. Nor is this to be imputed to neglect or accident; the reason of its not being found there, must be obvious to any intelligent person. It was never ordered to be inserted there, as was, and is usual in the case of standing laws; the customary clause in those cases, ut hoc decretum vestrum, vel hæc concessio vestra pro statuto habeatur, et in libris procuratorum inscribatur, makes no part of it: from whence the inference is obvious, that the decree, objected
by

by the promoter, was merely a temporary resolution, suited to the present emergency, and not intended to operate as a law in future. The same inference may be deduced from the omission of the words, *deinceps, or, in posterum*: it is said, *si quis oppugnaverit, not si quis oppugnaverit in posterum*; so that, supposing the form itself ever to have passed the senate, it was certainly never intended, *ut pro statuto in perpetuum habeatur*; and, it is, I believe as certain, that it has never since derived an authority from any publick act of the university. An attempt, therefore, to execute it at this time, must be as unreasonable and unjust, as it would be thought, an hundred and fifty years hence, to enforce, what is called the alien bill, or that concerning traitorous correspondance, when the occasion of passing those laws was become mere matter of history, and the relative situation of England and France entirely changed.

Such a grace could never have been enforced. I am warranted in saying this, supposing the decree ever to have had an existence, of which, I believe, the promoter has no farther evidence than that of a private authour half a century after the date of it. But would such evidence be allowed, in Westminster Hall, in favour of any law, which was not to be found in the rolls of parliament, and of which there were no traces in the decisions of the courts of law? I alledge yet farther, that if the decree were found in the proper place, and containing all the expressions necessary to shew, that, in the intention of those who passed it, it was designed to operate as a law, *perpetuis futuris temporibus*, it must be considered as null and void, for want of power to execute such intention. The subject matter of it does not come within the limit prescribed in that clause of Queen Elizabeth's statutes, under which alone, since these statutes were given, the power of making additional laws is vested in the senate. For, what connection is there between a decree *de oppugnatoribus ecclesie*

ecclesiæ anglicanæ, and a power of making statutes ad eruditionis amplificationem, et decori atque honesti conservationem? But this is not all; it also istis statutis detrahit aut officit, as it gives to the vice-chancellor alone, a power of punishing those offences, the punishment of which is, by the statute, given to him and a majority of the heads jointly; and as it takes from every member of the university, the privilege of retracting or revoking his errors, by subjecting him ipso facto, to a suspension of his degrees.

The vice-chancellor agrees with the defendant. In this part of my argument, I have the authority of the vice-chancellor himself, who, on a former day, asserted, that no grace or decree of the university ought to be allowed in this court, which was inconsistent with a publick statute. I take the liberty of adding, whether it makes for or against the power of the vice-chancellor, that of the other heads of houses, or the privilege of a private individual*.

W. FRIEND.

Mr. Friend, having read this paper, addressed the court.

Questions for the promoter. Thus, Sir, I have endeavoured to refute the charges brought against me, but before I deliver the papers into your hands and submit them to a candid investigation, give me leave to address myself to the promoter. Though I have not taken any notice of the statute de concionibus, as he has mentioned the case of Mr. Charke, fellow of Peter-house, who in the year 1572 was under that statute deprived of his fellowship, and banished from the university, and it has been urged as a precedent for inflicting the same punishment upon me, I will take occasion from hence to ask the promoter, before we part, a few questions.

* This paper was afterwards delivered into the hands of the vice-chancellor,

Was

Was Mr. Charke cited into the vice-chancellor's court to answer for his conduct?

Who was the promoter of those days?

Was any near relation or intimate friend cited to appear against him?

Were any private letters or conversation betrayed for that purpose?

Was any attempt made to establish the charges by having recourse to distant publications?

Were the minutes of the evidence taken for the information of the judges put into the hands of the promoter, before they passed into the hands of the judges?

In a word, had the university the mortification of seeing a principal member, in the character of promoter, sacrifice every virtuous feeling to bigotry or resentment, to the hope of preferment or the love of perfection?

The twenty-seven have no regard for truth. While the promoter is ruminating on these questions, I will, Sir, detain the court only a few moments, in considering the nature of these prosecutions. I have been accused of impugning religion by asserting certain propositions, but, throughout the whole course of the proceedings, the promoter has never given himself the trouble to enquire a moment into their truth or falsehood. This he considered as of little importance. It was sufficient for him and the twenty-seven, that an opinion was supposed to be advanced, which, whether true or false, contradicted a notion maintained two hundred years ago, and was therefore a proper object for academical animadversion.

How

And have formed
an improper opinion
of the university.

How disgraceful, Sir, is such a conduct! These men misconceive entirely the nature and character of this university. We propose by our studies to investigate truth, it is our ambition to lay it open to the world: and should any one of us in the course of his reading see reason to alter his former opinions, or should he explore any latent truth, we will not on that account hold him up to publick censure. We applaud his researches, we approve of his zeal, we rectify our own notions by his discoveries, or if he errs his error teaches us to guard against some fallacy, and paves the way for future enquiries. Had the university been always of the same mind with the twenty-seven, in vain would a Locke have cultivated the powers of his mind: in vain would Newton have set aside the theories of the ancient philosophy. We must have been doomed to one beaten round of dry metaphysics, we must have plodded in the same dull course, and no one would have dared to follow the bent of his genius, lest the discovery of truth should banish him from the seats of literature.

No, Sir, let it not be supposed in the world that our character is degenerated, and that we are of such base and servile minds, as to entertain a wish for the suppression of liberal enquiry. We will continue to exhort each other to cultivate every noble science: some may chuse to explore with Newton the path into new worlds, others are investigating the causes which retained the human mind so long in the mazes of heathen mythology, others, by comparing the systems of the antients with the discoveries of the moderns, may steer between the principles of Leibnitz and our immortal philosopher, and build a theory, which erroneous as it may seem, does not want for advocates among the most intelligent mathematicians*. Why should we stop these men in their career, and if they should carry their attention to sacred

* See the works of Boscovich.

Subjects or the art of government, are their endeavours to be derided or impeded? Are religion and politicks the only things so well understood, that no addition or improvement can be made to them?

Liberty of the press asserted. I have been long, Sir, of opinion, that truth cannot suffer by the fullest discussion, and that every restraint on the liberty of the press, where no damage can be proved to have been done to an individual, is contrary to the interest of society. Truth is on the side either of the majority of a nation, or the minority. If with the former there is nothing to be apprehended from the power of the opponents. In vain will they attack it. The cause of error, weak in itself, will be rendered more feeble by every endeavour to raise its head, and it will be overcome, not by the strength of party, but by the force of argument.

If the truth rests with the minority, it is evidently for the interest of the other side, that every argument should be brought forward. That majority must be corrupt and base which requires the suppression of truth, when it ought, on the contrary, to hold forth every encouragement to free inquiry, by which it must be a gainer; for a tenacious adherence to its own erroneous opinions, in spite of reason or argument, must, by a continual and progressive state of degradation, render it unfit for the most laudable pursuits, and sink it at last in the depths of ignorance and vice.

In a well constituted government, no danger can possibly ensue from the publication of any sentiments religious or political; and that state of religion and government must be bad indeed, which can be overset by a shilling pamphlet. As to trials of this sort, I look on them as publick benefits; they may be compared to experiments in natural philosophy, and serve to shew what progress the publick mind has made in the investigation,

and how far it is prepared for the reception, of truth. In future times, it will be thought an extraordinary phenomenon, that in the eighteenth century, in a place dedicated to the pursuit of literature, a man should have been thus summoned, thus tried, and thus persecuted for the publication of opinions, which no one of his accusers attempted to refute.

Free inquiry, to whom injurious. To sum up the whole, Sir, in few words; free inquiry cannot be injurious, except to wicked and depraved minds. Society may be meliorated, but can never suffer by it: and if it should be objected, that thus a door will be opened to the propagation of erroneous principles, let us still recollect, that the errors of genius are momentary and pardonable; but how shall we hereafter dispell that horrid gloom of intellectual darkness, which the promoter and his cabal are endeavouring to spread over this university!

PROMOTER'S REPLY.

Dr. Kipling now rose and observed, that when he considered the number of hours which had already been wasted on this trial, the precarious state of the vice-chancellor's health, and the various duties annexed to his office, he felt the necessity of confining himself, in his reply, entirely to the merits of the cause. He insisted that, notwithstanding every thing which Mr. Frend had said, to repell the charge of defaming the ministers and officers of the church of England, it must be obvious to every one, that the church of England must be the chief object of his attack. For to whom was the pamphlet addressed, but to the associated bodies of republicans and anti-republicans in England, and where must those abuses exist which they are called upon to remedy? certainly not in the church of Rome, to which their exertions could not extend, but in the church of England, where only they could be supposed to have any effect. The rest of
Mr.

Mr. Frend's defence was reducible, he said, to the following points :

The charge of malice imputed to him and the other prosecutors.

The impropriety of enforcing an obsolete statute.

The credibility of witnesses which had been produced in court.

As to the malicious and persecuting spirit with which he had been charged, Mr. Frend could not have forgot the opportunity which had been given him of making concessions, and averting the prosecution, if he had thought proper. Of this the promoter said he was ready to give an account, if called upon. Mr. Frend here desired him to do it. Dr. Kipling proceeded, and said, that not many days after the fourth of March, when the first resolutions relating to the prosecution had been agreed on at the vice-chancellor's, Mr. Marsh called upon him, and after expressing his concern for Mr. Frend, as a relation and friend, wished to know if there was no way by which the prosecutors might be satisfied, without bringing matters to such extremities as seemed to threaten him. He told Mr. Marsh, that in his private opinion, if Mr. Frend should recant, and make a proper concession, he would not be brought before the vice-chancellor. For his part, he assured Mr. Marsh, that he would then take no share in the prosecution, and he believed no other person would. Mr. Marsh went, by his consent, to Mr. Frend, who asked him, if he was authorized to make any proposals? and on his answering in the negative, Mr. Frend said, as you are not authorized, I can say nothing.

The promoter then went to the next point, and said, that as to the revival of laws which might seem to have

become obsolete, it did not follow, that a law, which had been long disused, was therefore never to be enforced. There might be times when it would be more prudent to connive at their violation, than to prosecute the offence. On the other hand, the times might be such as to demand every exertion, and to call on all the authority which the laws had given. The very times in which the pamphlet had been published were full of alarm, the press teemed with publications calculated to spread disaffection and discontent over the whole kingdom: the attorney general had found it necessary to proceed against the offenders with more than common rigour; and if in this place we had suffered such a daring attack upon the establishment, to go unnoticed, we should have proved ourselves ungrateful to the best of sovereigns*.

As to what Mr. Frenck had objected to the depositions of Mr. Plampin, Mr. Kilvington, and Mr. Lloyd, it was not to be supposed, for a moment, that three persons of liberal education, would knowingly perjure themselves in that or any other court. Their junction with others in the prosecution did not give them such an interest in the cause as to make them inadmissible. Every member of society is in some degree interested in the prosecution of a publick offence: crimes of the most enormous nature might go unpunished, if all persons interested were precluded from giving evidence, and in cases of murder, no witness at all could be admitted, all being concerned, and parties in bringing the guilt to light †.

The

* Why did not the promoter and his cabal, attack Mr. Frenck for several other publications written expressly against the tenets of the establishment? The great dispute on the unity of god, in which he took so active a part, both by his writings, and discourses from the university pulpit, did not, it seems, affect them: for what care they about the unity of god, or any other religious controversy, unless the times are such, that by opposing every effort to advance the truth, they may accelerate their own perishment?

† It appears from the protest, that Mr. Kilvington's evidence only was objected to on account of veracity; that of the other two,

The present prosecution was of a publick nature : the defendant was not cited for any personal offence to him or any other of the prosecutors. He had offended the publick at large by his indecent reflections on the publick institutions, he had called the solemnity of interment a spiritual incantation, he had charged the worship of the church with idolatry, and coupled the holy communion with a bacchanalian revel. The publick therefore was injured and insulted, every man was interested in punishing the crime ; and the three gentlemen who had borne testimony in the cause, ought no more to be rejected on account of partiality, than any other evidence who felt it a duty to stand forth and endeavour, as much as in him lay, to repress an evil of such a dangerous nature. Under this impression, the promoter said, that he had acted to the best of his abilities, and concluded with a compliment to the vice-chancellor and the heads, for their patient attention during the whole of this long trial.

Mr. Frensdale rose and observed, that as the promoter had been permitted to digress from the proper business of his reply to the relation of a fact which had not been before the court, he hoped that he might be allowed to make an observation also on the same subject. The vice-chancellor answered : To be sure. Had I known what Dr. Kipling had been going to say, I should have stopped him.

Mr. Frensdale then related the whole of the transaction with Mr. Marsh, appealing to a letter which Dr. Kipling had received from Mr. Marsh, and which he declared should soon be in possession of the publick ; concluding the whole of this point with observing, that it was evi-

on different accounts : and the reader will keep in mind, that the objections are founded on the civil law, the law of the court, to which the promoter, and his partner, the vice-chancellor, seemed to have paid no attention.

dens

dent nothing conciliatory was ever intended: for if it had been, when they found it rejected by Mr. Frend merely as it should seem for want of authority in the proposer, this authority would have been given to Mr. Marsh, and the negotiation would have been resumed. But no such thing was done*.

As

* The copy of the letter which Mr. Marsh wrote to Dr. Kipling, on Monday the 6th of May, is in Mr. Frend's possession, but as it is of considerable length; a part of it only, containing those circumstances, is here inserted, which relate to the point in question.

‘ I perfectly well remembered that I had called upon you about two months before, to inquire if no method could be devised of averting the evil which threatened Mr. Frend; that a conversation took place, the result of which was, that I should go to Mr. Frend, and propose to him to make a concession, in the hope of having the prosecution dropped; that my instructions were, to say, I had reason to believe that a concession would produce the desired effect, but that I was not authorized to affirm it; that I went in consequence to Mr. Frend, that I made the proposal agreeably to my instructions; that he refused to return an answer, on the ground of my not being authorized to make the proposal, and that I again called at your house, to report what I had done.

‘ In answer to my request that I might not be called into court, you said, if it was not necessary, you should not do it; but if Mr. Frend refused to acknowledge himself the author, and proofs of the authorship were wanting, you should then be under a necessity of calling me. I replied, that as far as I understood the conversation which had passed in the evening, of my citation, the design of my evidence was merely to shew that a reconciliation had been proposed, and that I knew of nothing in that transaction, which would prove Mr. Frend to be the author of the work which was published in his name. You then gave me to understand, that in procuring my evidence, you had very different views from what I had imagined, as appeared from your making the following answer: Don't you recollect, that, when you made the report to me of the conversation, which had taken place between yourself and Mr. Frend, you said, among other things, that Mr. Frend used the following words: The members of the church of England have
less:

As to the promoter's maintaining that the ecclesiastical abuses complained of in the pamphlet, must be supposed to belong to the church of England, because the pamphlet is addressed to the associated bodies in this kingdom, he will please to remember, that all the paragraph from which he quoted, is expressly said, in the bottom of page 41. to be a digression with which the parties addressed have nothing to do. The words are : ' The contending parties, whom we are addressing, will, however, consider this as a digression, and leave to others the care of directing the spiritual concerns and meliorating the religious opinions of mankind.'

less reason to be offended than the dissenters, because, in the parallel which I have drawn between them, the advantage is much in favour of the latter ?

' To my reply that I did not recollect having reported from Mr. Friend, the words which you repeated, you discovered, Sir, very visible marks not only of disappointment, but of anger, and in a very haughty and imperious tone, a tone which our respective situations, I think, will not justify, you threatened me with all the danger of prevarication; you told me that I should lose my character, if I pretended to conceal what I knew to be fact; that I was not the only witness, who had been tampered with, in order to conceal evidence which should be brought to light, and then lifting up your arm with a menace, which (excuse me, Sir, the expression) at present appears to me ridiculous, you solemnly and violently declared, that you would not suffer such proceedings'

Mr. Marsh, on the subject of tampering, remarks with proper warmth : ' I assure you, Sir, that unless the name of tampering be applied to the attempt, which you yourself have made to recall to my mind expressions, of which I have not the smallest recollection, as used in the manner which you declare, I know of no attempt, either direct or indirect, to which the term can be applied. With the charge that other witnesses have been tampered with, I have no immediate concern : I can only say, that I know of nothing of the kind, and that I believe Mr. Friend is a man of too much honour, and too much courage, to stoop to such a baseness.'

With

With respect to the witnesses, it was unnecessary to add any thing to what had been stated in his objections to them, the grounds of which had not been removed by the promoter, as their inadmissibility depended on very different circumstances—on laws with which it was evident he had not given himself the trouble to make himself acquainted.

Mr. Frend then gave into the hands of the vice-chancellor the papers, containing his answer to several charges which he had read in the course of his defence, with the request that they might not be permitted to pass into the hands of the promoter, or any other persons, except the heads of colleges. The protest against the validity of the minutes of the evidence he then signed and delivered to the registry.

ACTA CURIÆ.

At a court holden on Tuesday, May 28th, between the hours of eleven and one.

THE vice-chancellor informed Mr. William Frend, that having fully and maturely weighed and considered the charges brought against him by Dr. Kipling, the evidence, and his defence, he was of opinion, that he the said William Frend was proved to be the author and publisher of a pamphlet, intitled Peace and Union, recommended to the associated bodies of republicans and anti-republicans; and that by writing the aforesaid pamphlet, and publishing it within the university of Cambridge, he the said William Frend, had offended against the latter part of the statute de concionibus,

tionibus, beginning with the words, Prohibemus ne quisquam, &c. &c.

Then the vice-chancellor, with the assent of the major part of the heads of colleges, as is required by the statute, directed Mr. Frend to retract, and publicly confess his error and temerity in the following manner.

‘ I William Frend, master of arts, and fellow of Jesus college, in the university of Cambridge, do acknowledge that, by writing a pamphlet, entitled Peace and Union, recommended to the associated bodies of republicans and anti-republicans, and by publishing the same within the university of Cambridge, I have offended against the latter part of the statute de concionibus, as expressed in the following words :

‘ Prohibemus ne quisquam in concione aliqua, in loco communi tractando, in lectionibus publicis, seu aliter publice infra universitatem nostram quicumque doceat, tractet, vel defendat contra religionem seu ejusdem aliquam partem in regno nostro publica autoritate receptam et stabilitam, aut contra aliquem statum autoritatem dignitatem seu gradum vel ecclesiasticum vel civilem hujus nostri regni vel Angliæ vel Hiberniæ.

‘ I do therefore, by the direction of the vice-chancellor, with the assent of the major part of the heads of colleges, retract, and publicly confess my error and temerity, as the said statute requires.’

And the court was adjourned to Thursday next, the 30th instant, at nine o’clock; and Mr. Frend was warned by the vice-chancellor then to appear, and to read the form above-written.

“ The commissary began the business of this day by reading a part of the written defence which Mr. Frend

had delivered to the vice-chancellor on the preceding court day, and addressing himself to Mr. Frend, asked him, whether he wished to be heard upon the statute de concionibus. Mr. Frend replied: certainly not. Upon this, the vice-chancellor declared Mr. Frend guilty of a breach of the statute de concionibus, as is stated in the *acta curiæ*, prefacing his order to recant with the following resolutions, which he read from a written paper.”

Cambridge, Queen's college, May 27, 1793.

AT a meeting of the vice-chancellor, and the under-written heads of colleges: It was unanimously agreed, that William Frend, master of arts, and fellow of Jesus college, is proved to be the author and publisher of the pamphlet, entitled Peace and Union, recommended to the associated bodies of republicans and anti-republicans.

It was also unanimously agreed by the said vice-chancellor and heads of colleges, that by writing the aforesaid pamphlet, and publishing it within the university of Cambridge, the said William Frend has offended against the latter part of the statute de concionibus, beginning with the words, *Prohibemus ne quisquam*, etc.

It is also unanimously agreed by the said vice-chancellor and heads of colleges, that the said William Frend be directed by the vice-chancellor to retract, and publicly confess his error and temerity in the following manner*.

* Why were not these resolutions inserted with the recantation in the *acta curiæ*? Was the vice-chancellor conscious that these resolutions could only be made in a private meeting, and that the making of them would prove that he was acting in two different courts?

Here

“ Here follows the recantation as above, and then the signatures.”

Isaac Milner, V. C.	J. Barker,
John Smith,	J. Turner,
R. Farmer,	Francis Barnes,
W. Colman,	W. Craven,
L. Yates,	T. Poftlethwaite.

“ A copy of the recantation, without any signatures, or resolutions, was delivered to Mr. Frend, who insisted on seeing the paper signed by the heads, which was delivered to him. He then began to read and observe upon it—the second article of the charge has never been proved against me—by writing, I have offended against the statute de concionibus—am required to retract my error and temerity—What does that mean? The vice-chancellor interrupted Mr. Frend, who said, I am reading only that I may understand it; and then proceeded in his remarks. The statute requires me to retract my error—that error must be first pointed out. The vice-chancellor here again interrupted; and Mr. Frend was again proceeding in his remarks, when the vice-chancellor called out with much vehemence—order! order! the court must not be trifled with any longer!

“ F, Sir, I must consider whether I can subscribe this or not.

“ V. C. Mr. Frend, I will answer at once all you are going to say. If you wish for time to consider it, I will adjourn the court: and I do accordingly adjourn this court till nine o'clock on Thursday morning: and I warn you to appear, and to retract in the manner in which you have been directed. If you neglect to appear, or refuse to retract, you must take the consequences.

“ Thus the court was adjourned; and Mr. Frend applied to the registry for a copy of the resolutions agreed to by the vice-chancellor and heads of houses; and on his saying, that he had them not, Mr. Frend made the same application to the vice-chancellor, who promised that he should have them. In the afternoon a copy of the recantation was brought to Mr. Frend, without the resolutions; on which he wrote a note to the registry, insisting on the vice-chancellor’s promise, which was sent by him to the vice-chancellor, and in a few hours a copy of the resolutions found their way to Mr. Frend, from Queen’s lodge.”

ACTA CURIE.

At a court holden, &c. on the 30th day of May, 1793, between the hours of nine and eleven.

MR. Frend appeared, and the minutes of the last court were read. Mr. Frend refused to read the form which was presented to him to read by the last court.

Mr. Frend delivered into court a paper, in bar of sentence, beginning, “ Whereas I William Frend am accused,” and ending with the words “ spiritus sancti. Amen.”

The vice-chancellor, with the assent of the major part of the heads of colleges, decreed sentence of banishment against Mr. Frend in the following form:

“ I Isaac

I Ifaac Milner, D.D. vice-chancellor of the university of Cambridge, do decree, declare, and pronounce, that William Frend, master of arts, and fellow of Jesus college, having offended against the statute de concionibus, by writing a pamphlet, Peace and Union, recommended to the associated bodies of republicans and anti-republicans; and by publishing the same within the university of Cambridge, and having refused to retract, and confess his error and temerity, in the manner prescribed to him by me the vice-chancellor, with the assent of the major part of the heads of colleges, has incurred the penalty of the statute, and that he is therefore banished from this university. (Signed)

Ifaac Milner, V. C.
 John Smith,
 R. Farmer,
 W. Colman,
 L. Yates,

J. Baker,
 J. Turner,
 Francis Barnes,
 W. Craven,
 T. Pofflethwaite.

And the court was then dissolved.

“ The court having been proclaimed, and the proceedings of the last court day read, the vice-chancellor addressed Mr. Frend: You have considered, Mr. Frend, this matter, and have now had time to answer, whether you will or will not retract as directed by the court.

Mr. Frend, rising with a paper in his hand, began to read:

“ Mr. Vice-chancellor, the form, directed to be subscribed by me, consists of two parts, of an—

“ V. C. Order! Mr. Frend, I have already heard you five hours in your defence, and would willingly have heard you for five hours more, if you had chosen to speak upon the statute de concionibus.

“ F. Sir,

“ F. Sir, it is not upon the statute de concionibus, that I am going to speak now, but——

“ V. C. You must not read or speak any thing now, but say, whether you will or will not sign that recantation.

“ Mr. Frend attempting again to read from the paper, the vice-chancellor again called out with vehemence—
Order! Sir, Order! Order!

“ F. Aye, Order! Mr. Vice-chancellor. I am for order; if you are a court of inquisitours, you may silence me; but here I must be heard.

“ V. C. You cannot; it is too late. If you do not read this form, we shall consider it as a refusal to retract, and proceed accordingly.

“ F. This paper contains important matter. I ask the opinion of the court upon it. If you will not allow me to read it, will you take it, Sir, and consider it yourself?

“ V. C. I will.

“ Mr. Frend then delivered the following paper to the vice-chancellor:

“ Mr. Vice-chancellor,

“ The form directed to be subscribed by me, consists of two parts—of an acknowledgement that I have offended against the statute de concionibus, and of a retraction, or publick confession of my error and temerity. The former appears to me unreasonable, the latter is unintelligible. I chuse to begin with the latter:—to retract, or publicly confess error or temerity, must mean, to retract or publicly confess some erroneous and rash position, or assertion, that has been advanced. But, where no position or assertion is stated to have been advanced, as in the present case, it can have no meaning at all. It is to
retract,

retract, or publicly confess nothing, or to make no retraction or confession.

“The unreasonableness of requiring me to acknowledge, that I have offended against the statute de concionibus, consists in this, that no charge whatever, of having offended against the statute, has been brought during the whole course of the trial. I have indeed been charged with impugning religion, as by law established, and with impugning all ecclesiastical ranks and dignities. The language of these charges is plainly borrowed from the decree, supposed to have been passed in the year 1603: *si quis oppugnaverit doctrinam vel disciplinam ecclesiæ anglicanæ*, are the words of that decree. The language of the statute, which must be deemed essential to any charge designed to be built upon it, is very different; it says, *Prohibemus ne quisquam publice infra universitatem nostram quidquam doceat tractet vel defendat contra religionem in regno nostro receptam et stabilitam, aut contra aliquem statum, auctoritatem, dignitatem, vel gradum vel ecclesiasticum vel civilem*. Now, with which of these acts have I been charged? and they are the only ones, which the statute makes criminal.

“In an act of parliament passed soon after the revolution, it is enacted, that if any person, having been educated in, or at any time having made publick profession of the christian religion, within this realm, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons in the holy trinity to be god, he shall incur certain penalties. But, would a charge of having impugned the doctrine of the trinity, though perhaps an offence against some other law, be deemed an offence against that particular statute, if unaccompanied with any charge of having, either by writing, printing, teaching, or advised speaking, denied that doctrine. If not, then, for the same reason, any charge, brought against me, of having offended against some other supposed law, cannot
be

be considered as a charge of having offended against the particular statute de concionibus.

“ The vice-chancellor having received the paper, and consulted some time with the commissary and the heads, came forward, and said, We all adhere to the form prescribed, and think that there is nothing contained in the objection. You have been convicted of offending against the statute: the statute has left to the court to direct the form of recantation; this we have given you; and you must now only answer, whether you will or will not submit.

“ F. I expected that the errors which I am to recant would be pointed out.

“ V. C. The error is, that you have offended the statute.

“ F. I declare, upon the honour of a gentleman, and the credit of a scholar, that neither my friends, nor I, can understand the form.

“ V. C. I will hear no more.

“ F. Am I then to subscribe this as my recantation?

“ V. C. You are.

“ F.—Then I would sooner cut off this hand than sign the paper.

“ Upon this the vice-chancellor and the heads employed themselves in signing the sentence, which had been prepared and brought into court; and Mr. Friend, after a minute's pause, addressed the vice-chancellor:

“ May I deliver this paper into the court, in bar of sentence?

“ V. C. You cannot.

“ F. Sir,

“ F. Sir, I appeal to the commissary, whether in any court of justice a plea may not be offered in bar of sentence?

“ Com. Sentence is not yet pronounced.

“ F. It is to prevent sentence that I offer this plea.

“ Having said this, Mr. Frend laid his plea on the registry's table.

“ Whereas I William Frend am accused of having offended against a statute of the university, by publishing a pamphlet, entitled Peace and Union, &c. and at the close of the last term, the following form of general absolution was pronounced by the vice-chancellor's deputy in a publick congregation: I do hereby plead that absolution in bar of any further proceedings against me, on account of the said publication.

“ Absolutio in fine termini.

“ Auctoritate nobis commissa, nos absolvimus vos ab omni levi negligentia, forisfactione, seu transgressionem statutorum privilegiorum et consuetudinum, et deo et sacramentis ecclesiæ vos restituimus in nomine dei patris et filii et spiritus sancti. Amen.

“ The heads having now resumed their seats, Mr. Frend repeated the request that his plea might be read.

“ Vice-chancellor. It cannot.

“ F. It must.

“ Com. No paper has been yet received into the court.

“ F. My request is that it may be received.

“ V. C. If you had any right, I would receive it.

“ F. I have a right, and, as a member of this university,

sity, I insist upon it.. I do demand that it may be received and read.

“ Upon this the vice-chancellor took the paper, and having slightly perused it, with the heads, threw it back again upon the table, and read from a written paper an address to the audience, the substance of which is as follows.”

VICE-CHANCELLER'S SPEECH.

On his election into the office of vice-chancellor, Dr. Milner said, that the ill state of his health made him acquiesce in the determination of the university with much diffidence and anxiety. He foresaw that the remains of his health might be injured by the office, and his mind was agitated with this painful reflection: that the dignity of the office of vice-chancellor suffers, and the discipline and general interests of the university are essentially injured through his incapacity.

He was in hopes, however, that the peace of the university would not be disturbed: little imagining that he should be called upon to animadvert, not upon the rash and intemperate sallies of an inexperienced youth, but upon the premeditated and offensive conduct of a gentleman, with whom, he said, he had been long acquainted, and for whose talents and attainments he entertained the most sincere respect.

As this event however had taken place, nothing remained for the vice-chancellor but to investigate the nature of the offence, and the punishment assigned by the laws of the university, and to explain them both in the most conspicuous manner he was able.

On such an occasion, he observed, the situation of the judge of this court is not to be envied. The times are unfavourable

unfavourable to the enforcement of rigid discipline. Produce existing laws and you are told, that such laws ought not to have been made; that they are a disgrace to the country; that they are obsolete, and, perhaps, that you dare not enforce them. Others admit, with more temper and plausibility, that offences like the present are highly blameable in themselves, and that, if punishments were confined to such gross and indecent examples, there would be no room for complaint; but, when you have once begun to punish for the propagation of opinions, unfair advantages will be taken; not a syllable must then be uttered against what is established: there is an end of the exercise of our faculties in a dispassionate investigation of truth. Then the parties cry out—persecution!—tyranny over the conscience!—no freedom of discussion!—And thus the clamours of the ignorant or disaffected, are to be an answer to every sober argument, that can be advanced in favour of the most sacred and venerable institutions to be found in the history of mankind.

As these clamours may have a tendency to draw away the soundest mind from the point in question, the safest rule is, he observed, to pay not the least regard either to those who cry out tyranny and persecution, or to those who cry out heresy and sedition.

With these impressions he entered on this unpleasant business, conceiving that, as a bold and indecent attack had been made upon the religious institutions of the country, and the statutes of the university openly violated, the very existence of the university might soon be endangered.

It was true, he said, that many cases of libellous publications were much better treated with neglect and contempt. But the case of Mr. Frend was of a peculiar nature: He is a

person of considerable standing in the university, and we are all of us ready to bear testimony to his talents and attainments. He has been in the most important situation of a publick tutour of a college. He resides a good deal among us, and by his zeal and perseverance, is well qualified to make impressions on the unsuspecting minds of youth. He is known to have objections to the established doctrines of the church; and if his defamation of the solemn institutions of our religion, and the publick functions of the clergy, went unpunished, the under-graduates would soon insult the doctrines and ceremonies of the church, believe them to be mere political contrivances, and conclude, that we, as well as others, being convinced that they are indefensible by reason, are only induced to adhere to them from pusillanimity, or self-interest.

Whilst I was hesitating, (he continued,) whether, as vice-chancellor, I was not called upon *ex officio* to animadvert, in a summary way, on the authour of this pamphlet, I was released from my doubts, by the applications of thirty-four members of the senate, most of them of distinguished reputation, who, without the least appearance of animosity or resentment, professing also to be solely influenced by a desire of maintaining the honour of the university, requested the vice-chancellor to take cognizance of this offence.

Let us hear, therefore, no more of tyranny and persecution on the one hand, nor of heresy and sedition on the other, but seriously and solemnly approach the cause itself.

A grievous charge is brought against Mr. Frenck. I find myself bound to enforce the statutes of the university. I do not mean to insinuate, in the slightest degree, that the 45th statute is an unwholesome or impolitick law:

law : I find it in existencé, and I am bound to execute it*. Dr. Kipling has pointed out particular statutes, which he affirms to have been violated, and therefore, in case of conviction, the court has no option. The conviction depends on two circumstances. Is Mr. Frend the authour and publisher of the pamphlet? On this head we have not the least embarrassment; and Dr. Kipling has, we think, produced a great deal of superfluous evidence †. Does the pamphlet contain matter by which the 45th statute is violated? We are all convinced that it does; and the eloquence of Mr. Frend has not convinced us that the most offensive passages do not apply to the church of England, as well as the church of Rome ‡.

But supposing the court to have a discretionary power, what could induce them to exercise it? Were not the times, when the pamphlet appeared, most critical? Did the authour inculcate the necessity of peace and good order §? When the national convention of France had filled up the measure of their crimes, by murdering the king, and destroying all lawful government, and their deliberations breathed nothing but atheism and anarchy,

* Why does not the vice-chancellor observe and cause to be observed all the other statutes which are in existence, and which, upon his mode of reasoning, he is equally bound to execute?

† Dr. Milner may have been convinced in his own mind, because Mr. Frend went to him for an imprimatur, and shewed him the manuscript of the work; but as a judge, he ought to determine only by the evidence in court; and how could Dr. Postlethwaite be satisfied, without hearing the evidence on this point?

‡ Surely Dr. Milner might have satisfied the audience on this subject, by giving some reasons for this opinion.

§ Yes, and in every part of the pamphlet the necessity of it is implied.

did

did he inculcate a respect for the king and parliament of this country, and for the reformed religion, and the functions of the clergy as established by law*? In a word, was it not his plain object to teach the degraded laity, that they were sitting like brute beasts under an usurped authority †. In the title page, there stands in great letters, 'Peace and Union,' but my assessours, the heads of colleges, concurred with me in opinion, that the offensive passages belonged to the church of England, as well as that of Rome.

Again, the authour, the vice-chancellor observed, had not shewn the slightest vestige of contrition, and had mistaken, in several ways, the proper mode of defence. He has not treated the cause with a sufficient degree of seriousness, but expected to make an impression on his judges by legal quibbles, strokes of wit, and allusions to novels. He might have avowed the authourship, and have said, this I maintain to be true, that may possibly be defended, but here I wish I had stopped. He might have boldly confessed and defended his principles, and in a manly way have submitted to the infliction of penalties, which, according to his judgment, were arbitrary and unreasonable ‡.

The

* If Milner were to be seen often in a pulpit, we might ask him, whether in every sermon he followed this plan, and why was the authour to inculcate a respect for the established religion, when he is well known to disapprove of many points in it? But to hear Milner talk of religion, and the functions of the clergy, was such a burlesque, or, to use his common phrase, 'keeping up of the hum,' as was never before exhibited.

† So far from it, he tells the people of England, that the alliance between church and state is a fiction, which could not be realized in this country, without subjecting the abettors of it to the penalties of treason, and that all our ecclesiastical laws depend on the authority of parliament.

‡ *Quanto rectius hoc, quam tristi lædere versu
Pantolabum scurram, Nomentanumve nepotem!
Cum sibi quisque timet quanquam est intactus et odit.*

Mr. Friend

The court has been at a loss to comprehend in what way the continued application of satirical remark on the character of Dr. Kipling, and on the rest of the gentlemen who disapproved of this publication, could be useful. Can he now say as the great roman did of old, *Si nulla alia in re, modestia certe et temperando linguæ adolescens senem vicero!* It was more than once insinuated, that the promoter of this cause could neither read nor speak a word of pure latin*. But supposing that the bishop of Llandaff could permit the most important professorship of the university to be so scandalously degraded and neglected, as this imputation on Dr. Kipling implies †, or that calumny could fix itself on the characters

Mr. Friend does not now shew the slightest vestige of contrition. He is well convinced that the vice-chancellor and his cabal wished the cause to be treated in a more serious manner; but it is to be hoped that all persecuters may, in future, be treated in the same manner. At the latter end of the eighteenth century, it would be ridiculous in the extreme, to give any kind of importance to a promoter, sub-promoters, and familiars; they deserve only to be treated with contempt and ridicule, and to be held up to the world as fit for nothing but to cringe basely for preferment.

* For read he could nor evidence nor will,
 Ne tell a written word, ne write a letter,
 Ne make one tittle worse, ne make one better:
 Of such deep learning little had he need,
 Ne yet of latin, ne of greek, that breed
 Doubts mongst divines, and difference of texts,
 From whence arise diversity of sects,
 And hateful heresies, of God abhor'd:
 But this good sir did follow the plain word,
 Ne medled with their controversies vain;
 All his care was his service well to fain,
 And to read homilies on holy days;
 When that was done, he might attend his plays.

MOTHER HUBBERD'S TALE. l. 382.

† Many more besides Mr. Friend, who entertain the greatest respect for the bishop of Llandaff, feel themselves concerned for the honour

ters of Dr. Glynn and Professour Mainwaring, of twelve tutors and lecturers, of thirty-four members of the senate, how would all this exculpate Mr. Frend? But not content with this, he has maintained that their evidence on oath ought to be rejected. Let us try the truth of this assertion by a possible supposition. Suppose the whole university in a body had made this application, would any man say, that the evidence of every person in that body speaking on oath, not to the merits of the pamphlet, but to a plain fact, is to be rejected? This would amount to no less an absurdity, than that the very greatness of the crime might properly become its shelter and defence*.

honour of the university, that he should suffer the most important professorship to be so degraded by his deputy. They lament, that the baldness of the promoter's latinity, the insignificance of his questions, and his total ignorance of logick and theology, have rendered the divinity-schools contemptible.

* The vice-chancellor's supposition is an absurd one, and does not in the least invalidate Mr. Frend's objection. The objection is made by the defendant before the oath is given, and he cannot know for what purpose the witness is called. The question is, whether, according to the civil law, one of the party concerned in the accusation can be a witness, and it matters not whether the party consists of twenty-seven, or all the members of the senate. But the vice-chancellor concealed another circumstance: the act of the twenty-seven was infamous; they constituted themselves an infamous cabal of spies and informers, and, had all the members of the senate joined them, the infamy of the action would have been still greater, inasmuch as the accused person's last resource is an appeal to the senate itself. What chance would he have of justice, if his judges must be taken out of, and chosen by the body of accusers? Less, if possible, than Mr. Frend's was, when it was well known, that in his case, the delegates were nominated by one of the heads who had signed his sentence, and members were sent for from all parts to vote, according to the expression of a dignitary of the church, who came upon this errand, against Mr. Frend. Mr. Frend, in the mean time, did not interfere in the least in this election.

The

The vice-chancellor now addressed the junior part of the university. He would not, he said, animadvert on the noisy and tumultuous irregularities of conduct by which the proceedings on some of the former court days had been interrupted *. He informed them, that their passions and affections had been founded upon some vague ideas, that the accused person had been persecuted. It was necessary to advertise them of their danger, when this country had just escaped an alarming crisis, and every attempt to punish libellous attacks on the constitution and government was called a species of persecution, and contrary to the imprescriptible rights of man. There could be no persecution, where there was fair ground of accusation, and the accused person had had a fair hearing. I feel myself authorised, said he, to interrogate you closely, whether, being educated from the earliest infancy in the practice of frequenting the church, and reverencing her institutions, you are now prepared to say, on reading the pamphlet, that the accusation of impugning the church was either frivolous or oppressive. On the second point, that the accused person has had a fair trial, I have no anxiety. I have no doubt that you will tell your fathers, your guardians, and your friends, that you never heard or read of a trial, where the accused person had a more full, deliberate, and impartial hearing †. You will tell them also, that the only doubt you could entertain of the propriety of the proceedings

* It is absolutely false that the proceedings were ever interrupted; but men without large wigs have risible muscles.

† There never were seen greater instances of partiality in any trial. The objections of the defendant were constantly over-ruled without any reason assigned; whatever could make in his favour was always rejected; the accuser called and recalled evidence, and put words in their mouth just as he pleased: and if the judge was obliged to let the defendant have a few hours in one day to himself, it is to be recollected, that the accuser had employed five days in the accusation.

might be, whether the judge of this court, through an extreme unwillingness to interrupt the accused person in his defence, did not carry his patience and forbearance to an almost unwarrantable length : that the university of Cambridge will not suffer the sacred and venerable institutions of the church to be derided and insulted, and that at a time, when a profane and licentious spirit of infidelity and irreligion makes rapid advances, and threatens the destruction of our ecclesiastical fabrick, there were to be found in these seminaries, respectable characters, who could accuse with liberality and decorum, and judges who could condemn with firmness and moderation*.

The remaining part of my advice to you is short but important. Beware of entering into religious controversies, at this period of your lives. Whatever may be the profession you are intended for, improve your understandings by the diligent pursuit of academical studies : obey your tutors : frequent the service of god according to the established forms, both in your private colleges, and the university church. At present, take it for granted, that our forefathers had some good reason for steadily adhering to and supporting these venerable institutions. Take it for granted, at present, I repeat it, and those whom I perceive to object to these words will themselves tell you, that it has not been my way to take things for granted † : but it is not your time to become parties in controversial matters of religion.

* The moderation of the judge was evident, when he vociferated order ! order ! to prove the strength of his lungs, and made more noise than the president of a bear garden.

† Not on philosophical subjects : but has not Dr. Milner subscribed the thirty-nine articles ? and is there a man in the university, who supposes that he ever gave himself the trouble of investigating them ? and would not he himself be offended with any one who should assert that he believed them ?

It

It is easy to guard against those who openly attack your religious principles; but I have more apprehensions from those who are perpetually talking of candour, liberality of thinking for themselves, and such like topics, very captivating to the unsuspecting minds of youth.

Remember the earnest advice of one, who addresses you thus, from the purest motives of good will, whose imagination and temper have never been heated with religious disputes, whose pride and ambition have ever been to obtain, in the various branches of useful science*, solid information for himself and others, and whose health has been almost exhausted with academical labours; of one who addresses you, not with the authority of a vice-chancellor, but with the affection of an experienced academick; of a person who has never been suspected of being fond of possessing offices or dignities †; who lamented that the necessity of this enquiry should have taken place in the present year, but thought it his duty, when the enquiry was instituted, to go through it with energy, and found it impossible to acquit Mr. Friend of having offended against the statute, without sacrificing every principle of truth, justice, and honour.

The vice-chancellor then read the sentence, and the court was dissolved.

* Then Dr. Milner, president of Queen's college, and dean of Carlisle, does not suppose divinity to have any rank among the useful sciences: we all believed this of him, but did not think that he would be so unguarded as to mention it in publick, and on such an occasion.

† Did he ever refuse any one that he could get, or let go any one that he could keep? If it is said that he wished to decline the office of vice-chancellor, it is to be recollected, that he considered it as an onus, not an honour.

Thus ended the proceedings in the vice-chancellor's court. The day after, Mr. Frend waited on the vice-chancellor, to declare his intentions of appealing to the senate against the sentence of the court; and on the following day, the proctor inhibited the vice-chancellor, in the usual form, from putting his sentence into execution. The mode of appeal and inhibition is stated by the registry in the following words:

Queen's College, June 1, 1793.

Business of Appeal
 between
 William Frend, M.A.
 and
 Thos. Kipling, D. D. } Before the right worshipful
 Isaac Milner, D. D. vice-chancellor of the university of Cambridge.

On which day, at the hour of eleven in the forenoon, the said William Frend appeared, and having, in the afternoon of yesterday, declared to the vice-chancellor his intention of appealing from a certain definitive sentence pronounced upon him by the said Isaac Milner, on the 30th of May last, did then and there take the oaths de gravamine and de non sollicitando delegatos.

At the same place, day, and hour, George Hunter, M.A. junior proctor of the university, appeared, and inhibited Isaac Milner, D.D. vice-chancellor of the university, during the appeal between William Frend, party appellant, and Thomas Kipling, party appellee, in the following words: "Ego Georgius Hunter, procurator alter, nomine academice te Isaacum Milner, procancellarium, judicem a quo, inhihero, ne quid, pendente appellatione inter Gulielmum Frend, et Thomam Kipling attemptare vel innovare presumas."

Me present.

GEO. BORLASE,

Not. Publ. and Registr.

Business

Business of Appeal
between
William Frennd, M.A.
and
Thos. Kipling, D. D. } Before the right worshipful
Isaac Milner, D.D. vice-chancellor of the university of Cambridge.

On which day, at the hour of twelve, Thomas Kipling, D.D. and John Beverley, M.A. his proctor, did appear, and did then and there respectively take the oath "de non sollicitando delegatos," in a certain cause of appeal between William Frennd, party appellant, and him the said Thomas Kipling, party appellee.

In the presence of me,

GEO. BORLASE,

Not. Publ. and Registr.

PROCEEDINGS

IN THE

COURT of DELEGATES.

FIRST COURT.

Univerfity
of
Cambridge. } Before the right honourable and
 } right worfhipful William Wynne,
 } knight, doctor of law, the worfhipful
John Hey and John Barlow Seale, refpectively doctors
in divinity, and the worfhipful John Lane and Edward
Christian, refpectively mafters of arts, judges delegates,
in a certain caufe of appeal, or complaint, between
William Frend, M. A. and fellow of Jefus college, party
appellant, and Thomas Kipling, D.D. party appellate, in
the law fchools of the faid univerfity, on Friday the 28th
day of June, 1793, at nine o'clock in the morning.

Me prefent.

GEO. BORLASE.

Not. Publ. and Regiftr.

Businefs

Business of Appeal between William Frennd, M.A. and Thos. Kipling, D.D. } The grace of the senate, 14th June, 1793, appointing delegates in this cause, was read. Also a citation of William Frennd, party appellant, and a citation of Thomas Kipling, party appellee. And John Beverley, esquire bedel, was sworn, who deposed, that he had respectively served the said citations on Mr. Frennd and Dr. Kipling, who both appeared.

Also was read a paper signed Robert Tyrwhitt, purporting to be a protest against the legality of the aforesaid grace. Mr. Tyrwhitt was heard in support of the protest; and the judges delegates, after deliberating on the same, declared, that they were unanimously of opinion, that nothing contained in the protest ought to prevent their sitting to hear this cause; and that they were ready to do so.

The registry being sworn, deposed, that he had looked over the minutes, since they were returned by the promoter of this cause, in the court below, and that they had not undergone any alteration while in the promoter's hands.

And the proceedings and evidence had and taken in the court below, were read as far as to the act of court 13th of May inclusively.

And the delegates adjourned the court to a quarter past four o'clock in the afternoon of this day.

GRACE for the APPOINTMENT of DELEGATES.

JUDICES delegati in causa appellationis inter Gulielmum Freund, A. M. et Thomam Kipling, S. T. P. electi et dati sunt

Gulielmus Wynne, Eques.

Dr. J. Hey, Sidn. coll.

Dr. Seale, Xti.

Mr. E. Christian, Div. Johannis.

Mr. Lane, Coll. Regin.

Placeat vobis ut prædicti viri sint iudices delegati in prædicta appellationis causa*.

SUMMONS from the DELEGATES †:

WILLIAM Wynne, knight, doctor of law, John Hey, doctor in divinity, John Barlow Seale, doctor in divinity, Edward Christian, master of arts, and John Lane, master of arts, judges delegates rightly and lawfully constitu-

* The delegates are nominated by the two proctors, and the members of the caput, except the vice-chancellor. The grace is then read in the houses like other graces. In this case, the master of St. John's brought with him a written list, to which the others, except two, acceded.

† The summons is inserted to shew, how totally ignorant the delegates were of the manner of proceeding in an appeal to the university. By taking upon themselves to summon, it should seem that there is good ground for the generally received opinion, that they received a variety of documents and instructions from the cabal, which had acted against Mr. Freund. It was their duty to come into the university, and it was then Mr. Freund's part, if he intended to prosecute the appeal, to wait upon them in person: but to summon the appellant, is out of all form and order.

ted,

ted, in the under-written cause, and between the under-mentioned parties, To our beloved in Christ, John Beverley, William Matthew, and Henry Gunning, esquire bedels of the university of Cambridge. greeting. Whereas in a certain cause of appeal and complaint which before us in judgment is now moved and depending between William Friend, master of arts, the party appealing or complaining on the one part, and Thomas Kipling, doctor in divinity, the party appellate or complained of on the other part, rightly and duly proceeding therein, We have decreed the aforesaid William Friend, the party appealing and complaining, to be cited and admonished to attend on the day time and at the place and to the effect and purpose under-written, (justice so requiring.) We do therefore strictly enjoin and command you jointly and severally, That one of you esquire bedels of the said university do peremptorily cite, or cause to be cited, the aforesaid William Friend, the party appellant and complaining in the said cause, to appear before us in the law schools of the said university, on Friday the twenty-eighth day of this instant June, between the hours of nine and twelve in the forenoon, then and there to prosecute his said appeal, and to abide in judgement until the final determination thereof, and further to do and receive as unto law and justice shall appertain, under pain of the law, and contempt thereof; and ye shall moreover intimate, or cause it to be intimated to the said William Friend (to whom also we do so intimate by these presents,) That we do intend to proceed, and will then and there proceed to hear and finally determine the said cause of appeal according to law. And that you or either of you shall duly certify to us, what you shall do in the premises, together with these presents. Given under our hands and seals, this twenty-first day of June, in the year of our Lord one thousand seven hundred and ninety three.

After the summons had been read, the following conversation took place.

Sir W. Wynne. Are the parties here?

Frend. I am the appellant in this cause.

Sir W. Wynne. The delegates are ready to proceed. What is that paper? (to the registry.)

Registry. It is a paper which I received from Mr. Tyrwhitt.

Sir. W. Wynne. Read it.

The registry then read as follows :

Jesus college, 20th June, 1793.

WHEREAS a grace proposing five delegates was read a second time in the non-regent house, on Friday last, and was then suffered to be taken away by the officiating bedel, without a scrutiny ; which grace was afterwards approved by a majority of votes in the other house :

I Robert Tyrwhitt, a non-regent master of arts, do, within ten days, make this open and legal protestation against the said grace.

1. In the first place, because I had not a statutable opportunity of expressing my disapprobation of it, either in whole or in part, though I was present in the house at the time it was read.

2. In the second place, because both the persons who acted as scrutators, were deputies, and neither of them sworn agreeably to the law of the university.

ROBERT TYRWHITT.

x. Stat.

1. Stat. Vet. 161. De modo et forma petendi gratias.
Stat. Vet. 80. Quomodo scrutatores tenentur petere gratias.

Stat. Vet. 63. De gratiis petendis.

2. Stat. five gratia. De procuratoribus et scrutatoribus deputatis.

This writing I received of Mr. Robert Tyrwhitt, on the twentieth day of June, 1793. Mr. Tyrwhitt, at the same time, expressed a desire that the same might be recorded.

GEORGE BORLASE, registr.

Sir W. Wynne. Has Mr. Tyrwhitt any thing to say upon this?

Mr. Tyrwhitt. A great deal on all the statutes which relate to the duty of scrutators and moderators on passing graces: but I did not think that I should be called upon here. I thought another place more proper for this discussion, and accordingly proposed my objections in the senate.

Sir W. Wynne. Do you wish to have the statutes referred to read in the court?

Mr. Tyrwhitt. If you think it necessary, I do: but I desire it may be understood, that it was not on account of this particular case that I objected: I should have done it on any other matter of more than ordinary concern.

Sir W. Wynne. It must be at your request, if they are read.

Mr. Tyrwhitt. Then I make it my request, that they may be read. My objections were opposed in the senate house by some persons there, with a degree of petulance

and violence, extremely unworthy of any member of the university.

The statute was then read

De modo et forma petendi gratias.

Item statuimus quod procuratores vel eorum alter cum occupante vices alterius seu procuratorum vices occupantes quamlibet gratiam petendam privatim scrutari teneantur et quilibet regens alteri eorum votum exprimens secrete respondere præmonitus per alterum procuratorum privatim respondere teneatur et pro secreto habere teneantur tam scrutator quam scrutatus: et qui contra hoc statutum venerit pœnam de secreta revelantibus incurrat. Nulla etiam gratia conditionetur sed pure concedatur vel negetur nec etiam aliqua gratia cum alia concurrat.

Mr. Tyrwhitt. It appears from this statute, that on all occasions the scrutiny should be secret. The putting in of a non placet at reading actually subjects a person to a penalty. It is wrong that the omission of putting in a non placet at the reading of a grace should be made a pretence for depriving any member of his privilege of voting. No person is authorized even to tell in what manner he voted.

Mr. Lane. What do you mean by pretence and omission?

Mr. Tyrwhitt. I mean only to represent the fact. The present practice of taking three steps in the house is a remnant of the original mode prescribed by the statute of walking round and asking the votes separately and privately, and supposes that a scrutiny has been actually taken. On common occasions, this may be sufficient:
but,

but, on such an occasion as this, it is an abuse of what even in ordinary cases is only an indulgence.

The statute *Quomodo scrutatores tenentur petere gratias*, was then read.

Item duodecimo die mensis Octobris anno millesimo CCCC° LXVII° in plena congregatione regentium et non-regentium statutum est atque ordinatum quod scrutatores electi arceantur ad petendum gratias et alia negotia universitatis exequenda secundum formam statuti quo arceantur procuratores eademque poena puniendi sunt si secundum formam prædicti statuti requisiti id facere recusent.

Mr. Tyrwhitt. This shews that scrutators and procurators are in this respect bound by the same laws.

The two other statutes referred to by Mr. Tyrwhitt in his protest were then read.

De gratiis petendis.

Statuimus et ordinamus quod de cætero nulla gratia tempus aut formam concernens petatur nisi in præsentia cancellarii vice-cancellarii vel præfidentis et hoc in nova capella et non alibi concedatur exclusa parva capella eidem annexa falvis tamen gratiis quæ in antiquis statutis solum regentibus reservantur concedendis. Et si aliqua gratia vel gratiæ concedantur quod alter procuratorum vel alterius eorum vices occupans alta voce dicat in medio capellæ ista gratia vel istæ gratiæ habentur in ista congregatione. Et si aliqua gratia contra prædictam formam concedatur impetrans officio suo sit ipso facto privatus et utens scienter eadem gratia excommunicationis sententiæ sit ipso facto subjectus a qua nisi in plena congregatione

gregatione per cancellarium vel ejus locum tenentem non valeat absolvi. Et ad hujus statuti continuam observantiam volumus singulos procuratores ac scrutatores futuros antequam admittantur ad eorum officia esse personaliter juratos.

Gratia 1575. Quod jurejurando astringantur procuratores et scrutatores deputati.

Conceditur 6 Maii cum procuratores et scrutatores sæpe propter negotia sua privata abesse cogantur a congregationibus et aliis publicis muniis academiæ ut eorum substituti et vicarii jurejurando astringantur ad bene et fideliter peragendum eorum officium antequam aliquid in præmissis pertractent.

Mr. Tyrwhitt. This provides that substitutes should be sworn before they act; which was not done. Mr. Collier was not sworn before he read the grace. This is the history of the matter. It is the duty of the scrutators and proctors, after reading any grace in either of the houses, to go and ask every member of that house his vote personally. This appears from the bedel's books, from printed books, and every other authority by which the practice of the university is directed. When I was scrutator, I took the votes, though no non placet had been put in.

Court. Is it the usual practice now?

Mr. Tyrwhitt. No: not in ordinary cases: it is connived at. But in extraordinary cases, where any opposition is expected, it ought to be observed. In this case it was known that above twenty persons came into the university, in expectation that it would be opposed.

Court. Did you take the votes personally in all cases when you were scrutator?

Mr. Tyrwhitt.

Mr. Tyrwhitt. No: not in all.

Dr. Hey. In what cases did you?

Mr. Tyrwhitt. On one grace in particular, which, had I been only a private member, I certainly should have opposed, but, as an officer, I could not.

Dr. Hey. Perhaps the purport of that grace was not very material.

Mr. Tyrwhitt. Yes; it was, in my opinion, very material; it was a matter which I had long and uniformly endeavoured to correct: it was a mandate decree for the master of St. John's college. But I repeat. I did not expect to be called upon here to explain the grounds of the protest: it must therefore be considered as a very short and imperfect account of the business.

Sir W. Wynne. We shall not retire to take it into consideration, till you have said all that you chuse.

Mr. Tyrwhitt. I will tell you then another instance, on which it was done. When the present vice-chancellor was a regent master of arts, a grace had been read in the non-regent house, and passed without a non placet having been put in. The present vice-chancellor, and the present bishop of Lincoln, were adverse to it, and wished it to be read again, and put to the vote. They came very improperly into the non-regent house, and declared, with much violence, that there were persons in the house, who wished to oppose it. I remonstrated upon the indecency of their coming as regents into the non-regent house to make their objections. However, I stated it to the house, and in consequence of my representation, the votes were taken.

Here the court retired for about five minutes; and on its return, Sir W. Wynne said: The delegates have deliberated, and unanimously determine, that nothing contained in Mr. Tyrwhitt's protest, or urged by him

in its support, ought to hinder them from proceeding in this cause; and they are accordingly ready to proceed. We are ready to hear the appellant.

Mr. Frend rose, and after remarking on the unusual step of being cited by them, read the proper mode of proceeding, as described in the bedel's book.

'The delegates, which, by the statute, are ordered to be at least three in number, and at the most five, pro qualitate causæ, being chosen, the party goes to each of them, desiring them to meet in the consistory, or some other fit place; and when they are met together, he presents the grace unto them as it passed in the senate; and when they have read it, they acknowledge acceptare in se onus commissionis, and declare themselves ready and willing to perform the office of judges in that cause, juxta tenorem delegationis. After acceptation made, the party appellant, or his proctor, doth desire the judges delegate to decree partem appellatam arrestandam fore citra diem eorum arbitrio assignandam, to answer unto such things as the party appellant shall object against him. If the party appellate will then appear, the cause is declared on both sides, and the party appellant hath assigned him ad proponendum in forma on the next court day, wherein such gravamina for the which he doth appeal, must be specified. The proceedings afterwards are ordinary, such as are in cases of the first instance.

He concluded with saying: I beg leave to know, whether this is the mode which is to be followed now.

Sir W. Wynne. We think that the whole proceedings in the vice-chancellor's courts should be first read.

Frend. Shall I make any remarks on them, as they go on?

Sir W. Wynne. As you please. But we think it better for the whole to be read first, and then for you to take up
your

your exceptions: unless there is any part which you wish not to be read.

The registry then began to read the proceedings in the vice-chancellor's court; and when he came to the articles of accusation, Sir William Wynne directed the quotations by which the respective charges were supported, to be read from the pamphlet itself.

Frend. They were not read in this place on the trial, Sir W. Wynne. They ought to have been.

Frend. With submission, Sir, to you, I should think it would be better to read them from the pamphlet in the course in which they were produced on the trial.

Sir W. Wynne. I have no objections. I am willing that they should.

Registry reads to the words 'false, wicked, and malicious,' page 16.

Frend. In my defence, I observed to the court, that in denying the whole, I did not mean to deny every particular. I did not deny that I was a master of arts: I did not say that I was not the authour or publisher: but I gave what, I believe, is usual in such cases, a general answer.

When the registry began to read the depositions of the witnesses, Mr. Frend addressed the court: You will take notice, gentlemen, that I gave into court, and do here repeat my protest against the validity of the evidence, the whole having been vitiated by the promoter's taking it out of court; and also for particular reasons against particular persons.

Sir W. Wynne. It will be impossible for us to judge, without hearing it all.

D d

Frend. I

Frend. I only meant to save trouble : if it is of no use, it is only a waste of time to hear it.

Dr. Hey. May it not be as well to consider the protest now ?

Sir W. Wynne. Perhaps it may be better. Will the registry say, that the papers, which Dr. Kipling took out of the court, were returned to him exactly the same ?

Bedell. Is the registry to be sworn ?

Sir W. Wynne. I have no objection to his being sworn.

Frend. I would spare the registry the oath, as I conceive it impossible for any person to take it : it is impossible to prove, or to be certain that the papers have not been altered. Except in the divinity schools *, I never heard of a proof being called for of such a negative proposition.

Sir W. Wynne. This is a court of justice, and we think it highly proper : they ought to be proved to be the same.

Mr. Frend then repeated the protest and the case of the jury, page 115, as a case in point. This was denied by Mr. Lane; and a short conversation followed, in which Mr. Frend maintained, that if not strictly in point, it yet concluded a fortiori in favour of his protest. For if the bare examination of a single witness out of court, by a set of uninterested and unprejudiced men, merely that he might repeat what he had said before in court, was

* An opponent in the divinity schools asserted, that something was not to be found in the new testament : Dr. Kipling, with his usual acumen, insisted that he should prove the assertion ; and it was in vain that the opponent requested him to point out the passage in which it was to be found. Tuum est, said the learned professor, probare minorem.

yet sufficient to set aside their verdict : how much more must the removal of the whole evidence affect its validity, when taken out of court by the promoter himself, and with the express purpose of directing it in the most forcible manner to the conviction of the offender ?

Here the registry repeated the declaration he had made in the vice-chancellor's court, that the papers had undergone no alteration, and that he was ready to swear to this. He was accordingly sworn.

Sir W. Wynne. Are the papers which Dr. Kipling returned to you, the same which you gave to him ?

Frend. Can you say that there are no marks, no erasures, no obliterations, no alterations whatsoever, made by the promoter ? Did you look all the papers over ?

Registry. I did look them over, and they have not undergone any alterations while in the promoter's hands.

Mr. Frend now observed, that having no expectation, that the proceedings of the vice-chancellor's court would be thus taken up, he had not brought with him the copy of the evidence delivered to him by the registry : he desired therefore permission of the court, to go to his rooms for them. This being granted, Mr. Frend went out, and Mr. Lambert took the opportunity of going out for the notes which he had taken during the whole of the trial. On their return, the reading was resumed, and very little progress was made before Mr. Frend observed the omission of a word in his copy.

Registry. Your copy is not attested by me.

Frend. It has not your name to it, but it is on a proper stamp ; it is marked as having been examined ; it

ought therefore to be literally exact. If it is not exact, for what purpose was it given to me?

The registry went on reading; and Mr. Frend, after remarking repeated variations, observed, that if mistakes of this kind are so easily made in copies taken and examined as accurate, it must be extremely difficult to swear to the identity of writings.

When the registry read the resolutions and signatures, p. 34, 35. Mr. Frend asked him, whether they were given to the promoter?

Registry. Yes; I presume they went with the other papers: I cannot be certain. But if they did, they returned as they went.

On Mr. Lunn's evidence, Mr. Frend observed, that no notice was taken of the objection and answer of the commissary, p. 42. but that the gentleman who assisted him in taking the notes of the trial, is ready to swear that he did object. He observed, at another time, that the depositions of each witness had been transcribed all together, without any distinction of the different times in which he had been called up; and that the registry was now reading them in such a manner, that the delegates might conclude it was all one continued deposition. He begged leave to recommend the same order in reading the depositions, as had been followed in the proceedings at the trial.

Registry. I cannot speak to the order.

Frend. This is another instance of the irregularities of this business.

On Mr. Plampin's evidence, p. 54. Mr. Frend observed: Here is another omission of important matter. No notice

notice is taken of my objection to this man's evidence. I excepted to him on two grounds. Mr. Lambert is ready to attest it. Mr. Lambert here rose and offered to make oath of the above, but the court rejected his offer; Sir William Wynne declaring, that they could not attend to any thing not in the registry's minutes*.

On Mr. Hodson's evidence, Mr. Frend observed, that Mr. Marsh was called in, but the registry had taken no notice of that circumstance. This ought to be attended to, as it proved the ground of a serious complaint from Mr. Marsh, of the treachery which had been practised against him. He had been promised, that, if he were called upon to give evidence, it would not be with any view of proving the publication; whereas on the trial it appeared, that he was called upon for that very purpose, Mr. Frend then desired that he might read what Mr. Marsh had said in court, as it would establish his charge of malice in the prosecutors.

The court said, that as this did not appear on the minutes, it could not come before them.

On Mr. Alger's evidence, Mr. Frend observed: The court does not perhaps see the tendency of these questions and answers. That copy of the pamphlet had been taken out of court, and the commissary himself had expressed his surprize at it. Several other remarks were made by Mr. Frend on various parts of the depositions, proving their inaccuracy: and at the close of them he observed, that the whole of the evidence was too inconclusive for the judges to have formed any opinion upon it; that the proceedings of the court had been very irre-

* Where did Sir W. Wynne learn this doctrine? An appeal is made on account of irregularities in the minutes, and, according to him, the minutes only are to be read. This may do in doctors commons, but it is not academical law.

gularly recorded; that all that had passed ought to have been registered; for, as the vice-chancellor took upon himself to make the heads concur with him under a law, which required the consent of the majority, and the master of Trinity, without whom that majority could not have been formed, was absent several days, the proceedings should have been taken down with accuracy; otherwise the master of Trinity had no opportunity of forming a judgment. Indeed he must have been totally unacquainted with the nature of many objections suggested by Mr. Frend; and yet, without his concurrence, no recantation could have been proposed. This was a grievance exceeded only by that which could not have escaped the observation of the delegates, since it was manifest to every person, that from the beginning to the end of the business, the prosecutors and the judges were one and the same party.

The third article having been read, p. 64, Mr. Frend addressed the court: When this charge was read by the promoter, I objected then, and I must repeat it now, that no such passage was to be found in the book, as that which the promoter articulated against me. But there is no entry of this objection in the *acta curiæ*: which proves that the master of Trinity could not be a competent judge in the case. He heard none of my objections to the mode of quoting mutilated passages, nor of my proofs of the necessity of producing the words themselves.

On article the fifth being read according to *acta curiæ*, page 64, Mr. Frend observed, that here again the master of Trinity could be no judge, not having heard either his, or the promoter's remarks. The promoter, by way of directing the proceedings of the court, produced the case of Charke; but being questioned, whether Charke had been summoned to appear in the vice-chancellor's court, and on
several

several other points necessary to establish his case as a precedent, could say nothing, though the master of Trinity, from what appears in the *acta curiæ*, must naturally suppose that it was admitted as a case in point.

Dr. Seale. Did not the judge suffer every thing to be stated, which you expressed a desire to have inserted?

Mr. Frend. No: he ordered the registry to mind what he said, not what I said.

When the registry had finished the *acta curiæ* for the thirteenth of May, p. 64, the court was adjourned to a quarter past four in the afternoon.

SECOND COURT.

Before the right honourable and right worshipful William Wynne, &c. on Friday the 28th day of June, 1793, in the afternoon, &c.

THE rest of the proceedings and evidence in this cause were read.

And the judges then declared, that the proceedings with the evidence had and taken in the court below, having been read and gone through in this court, they the judges now called on him Mr. Frend to proceed in his appeal.

Mr. Frend objected, that a certain paper relative to the sentence in the court below, and signed by the heads of colleges, had not been read. The judges enquired of the registry for that paper, who declared that it was not committed to his custody. Mr. Frend then declared, that

that he conceived he was not, by the statutes, [or practice and usage of the university] held to proceed in his appeal till the next court day, particularly by the 48th statute, and an interpretation of the same, dated Oct. 6, 1596.

The judges having considered the said statute, and the interpretation, were of opinion, that the interpretation had no reference to causes of appeal; and again called on Mr. Frend to proceed on his appeal. Mr. Frend declared, that he was not yet fully prepared. The judges deliberated; and declared they would hear Mr. Frend to-morrow, immediately after the morning congregation. Mr. Frend objected, that to-morrow being a holy-day, was not a dies juridicus: but the judges over-ruled this objection.

And the court was adjourned accordingly to to-morrow after the morning congregation.

When the registry came to the vice-chancellor's declaration in the acta curiæ of the 28th of May, p. 168, that he was satisfied that Mr. Frend was proved to be the author and publisher of the pamphlet, Mr. Frend observed that this was very improper: it ought to have been, we the vice-chancellor and heads of colleges are satisfied. How else does it appear, that they were convinced? and unless they were convinced, how could they sign the subsequent resolutions and sentence? The proceedings of this day are very imperfectly recorded. I should have spoken then on the form of the recantation proposed to be signed, but was prevented very abruptly by the vice-chancellor, who adjourned the court very improperly, without giving me an opportunity of being heard.

On the acta curiæ of the 30th of May, p. 172, Mr. Frend observed, that he brought a paper, which was not allowed to be entered on the proceedings of the court.

Sir

Sir W. Wynne. Nothing of this appears on the record.

Frend. No, Sir, because it was not allowed.

As soon as the registry had closed the reading of the papers, Sir W. Wynne asked for the resolutions at Queen's college, and then addressed Mr. Frend: We have heard now all that has passed hitherto, and are ready to hear what you have to say.

Frend. I observe, Sir, that you have not yet heard all; there were certain resolutions entered into at the vice-chancellor's lodge, which you just now seemed to enquire after, but which I did not know that you were aware of.

Sir W. Wynne. They are not here; we know nothing of them*.

Frend. I beg that the delegates may know that such resolutions were passed at Queen's college.

Registry. There is no copy of them in court:

Frend. There was a copy sent to me. The sentence has been read: the resolutions were brought into the vice-chancellor's court, and should have been read as part of the *acta curiæ*.

Sir W. Wynne. They are no part of the proceedings submitted to us.

Frend. Then I shall be ready to produce my *gravamina* on the next court day.

Sir W. Wynne. We are ready to hear them now.

Frend. It cannot be, I apprehend, on this day.

Sir W. Wynne. Why not?

Frend. Because it appears from the books by which the practice on these occasions is regulated, that the griev-

* How came Sir W. Wynne then to enquire after them?

ances are not to be produced till the next court day. I shall read an extract from the bedell's book, in proof of my assertion. Having stated that a day is to be appointed for the appearance of the party appellate, it goes on, 'If the party appellate will then appear, the cause is declared on both sides, and the party appellat hath assigned him ad proponendum in forma on the next court day, wherein such gravamina, for the which he doth appeal, must be specified. The proceedings afterwards are ordinary, such as are in causes of the first instance.'

The only question now is, when the second court day is to be: and this is explained by an interpretation of the heads, Oct. 6, 1596, which direct that the second court day can only be some court day in the following week. The interpretation runs in these words: 'Whereas it is carefully by statute provided, that all causes and controversies hereafter commenced or coming before Mr. Vice-chancellor, should, with great expedition, be adjudged and determined: yet notwithstanding it is of late years come to pass, that causes are often a very long time delayed and protracted, not only to the great trouble of the magistrate * * * * of suitors, and their extreme charge and hinderance, but even to the discredit of the court and university.'

'For remedy whereof, Mr. Roger Goade, doctor in divinity, vice-chancellor of the university, and the heads of colleges, whose names are underwritten, have and do interpret and explain a doubt rising of a branch of the former part of the 48th chapter of the statute intituled, De causis forensibus, and beginning thus: *Omnes causæ et lites quæ ad universitatis notionem pertinent, &c. finem autem accipiant infra triduum si fieri potest omni juris solennitate semota, viz. in these words: infra triduum si fieri potest, that all causes and controversies whatsoever wherein the vice-chancellor is competent judge, shall be by him, or his deputy, adjudged, determined, and ended,*
within

within three several ordinary court days, and those within three weeks next immediately following, (saving and excepting such weeks and court days as by law are to be excepted, as dies non juridici,) the first day of the three to be the first court day next after the day upon which the party defendant shall or ought to make his personal appearance, and the other two, the two ordinary court days in the two several weeks next following, without any fraud or further delay.'

Sir W. Wynne. The interpretation does not appear to refer to the causes of appeal, but only to proceedings in the vice-chancellor's court; and therefore you should be ready now.

Frend. I came here with the best information, I could procure from the statutes and the books of practice, relative to the course which I was to follow in these proceedings.

Dr. Hey. Are the books called the bedell's books, Bucks' books, or what authority have they?

Frend. All proceedings in causes of appeal to delegates, must be conducted in the same manner as causæ forenses, except in the preparatory part, which is regulated by these books.

Sir W. Wynne. I cannot tell what authority is ascribed to these books. They can have none, but as it is confirmed by the practice of the university.

Frend. I can only revert to them as the best directions I could procure.

Sir W. Wynne. Why cannot you enter on your gravamina now?

Frend. Because I am not prepared. I came here this day with the expectation of hearing that the cause would be proposed, and that then you would appoint some court day in the next week for me to produce my grievances.

The delegates now retired for nearly half an hour; and on their return into court, a little before six, Sir

William Wynne addressed himself to the appellant: Mr. Frend, the delegates are willing to allow you all possible indulgence, and therefore will allow you till to-morrow morning, after the congregation, to enter on your defence.

Frend. Gentlemen, to-morrow is not a dies juridicus; it is a faint's day; there is a sermon in the university church. The proceedings in this very cause in the vice-chancellor's court were put off two days on the same account. I believe that the master of Catharine-hall suggested the propriety of it, and the court acquiesced in it.

Sir W. Wynne, (to the master of Catharine-hall.) Was your objection founded on the reasons urged by Mr. Frend?

Master. Not at all. I only did it as inconvenient on account of the sermons.

Frend. I must still maintain my objection to the appointment of to-morrow for hearing my gravamina as informal and irregular.

Sir W. Wynne. We take that irregularity upon ourselves, and will allow you no further delay than till after the congregation to-morrow morning: the sitting to be resumed after the congregation in the afternoon.

Accordingly the court was adjourned.

T H I R D C O U R T .

Before the right honourable and right worshipful William Wynne, &c. Saturday the 29th day of June, between the hours of twelve and three, &c.

TH E minutes of the two courts of yesterday were read: and in the latter, after the words "he was not, by the statutes," were inserted the words "or practice and usage of the university."

Mr. Frend then read and presented a protest against his being called upon to produce on this day his gravamina,

mina, and desired it might be entered on the records of the court.

The court was unanimously of opinion, that Mr. Frend should now proceed to the gravamina.

And Mr. Frend did proceed to the gravamina accordingly; in the course of which he read to the court a paper, which, he alledged, he had been prevented by the vice-chancellor from reading in the court below, before sentence was pronounced upon him.

When Mr. Frend had finished, Dr. Kipling was called upon by the court, and asked if he was then ready to reply.

Dr. Kipling declared, that he was then ready to answer to interrogatories from the court: but that he had heard nothing that day that he desired to answer.

The court declining to put interrogatories to Dr. Kipling, he declared that he was willing to submit the whole to the judgement of the court.

And the court was adjourned, to sit after the congregation in the afternoon of the same day.

After the registry had read his papers, Mr. Frend rose, and desired leave to observe, that he had not objected to the production of his gravamina on this day, merely on account of the interpretation of the statute applying particularly to cases of appeal: the application of that interpretation was universal, and related only to the explanation of time meant to be allowed in all cases by the word triduum. My objection, continued Mr. Frend, was, on the ground of practice, collected from the instructions handed down as authority for the publick officers of the university.

Sir W. Wynne. There can be no objection to any plea from customary usage and common practice: this day

day was certainly objected to by Mr. Frend, but the objection was not admitted to have any weight.

Dr. Hey. I would not be understood to have acknowledged the authority of the bedell's books; I asked if they were Bucks' books, but received no answer.

Bedell. Bucks' books are here in court, and may be consulted, if you wish it.

Dr. Hey. Not at all.

Mr. Frend then addressed the court :

Gentlemen,

In the situation in which I stand, it cannot be supposed that I wish to offend any of the delegates; and in the step which I am about to take, I request you to consider me as acting upon motives which affect every member of the senate, and as being here not only to complain of private grievances to myself, but to withstand every proceeding which may hereafter be brought as a precedent to the injury of the members of the university. With this view I entered my appeal from the sentence of the vice-chancellor and the heads; and to support this appeal, I have endeavoured to gain all possible information on the proper mode of carrying it on. I stated yesterday what I gathered from the bedell's books as the most authentick guides which I could follow. This I considered, and still consider as the proper rule of this court, and without presuming to call in question your honour and integrity, I must protest against what appears to me an unjustifiable precipitation in this business. In the most respectful manner therefore, I do desire that my protest may be taken into your serious consideration, not on my own account merely, but that I may not by any conduct of mine, lay the foundation for a precedent, by which others may hereafter be essentially injured.

PROTEST.

P R O T E S T.

I William Friend, M. A. and fellow of Jesus college, in the university of Cambridge, do hereby protest against my being called upon to produce on this day my gravamina in a certain cause of appeal now pending before Sir William Wynne, LL.D. John Hey, D.D. John Barlow Seale, D.D. John Lane, M. A. Edward Christian, M. A.

For the following reasons:

1. Because the proceedings in all causes of appeal must be directed either by the statutes and interpretations, or the ancient and constant practice of the university: but the statutes and interpretations are all silent as to the proceedings in causes of appeal. Therefore there remains only ancient and constant practice by which they can be directed.

2. Because in certain books called the bedell's books, the authority of which in matters of practice is always admitted, express directions are given for the party appellant to specify his gravamina on the next court day after that on which the cause has been declared.

3. Because by the interpretation given by the heads, Octob. 6, 1596, of the word triduum, it appears that the next court day can only be understood, of the next court day of the ensuing week.

W. FRIEND.

Having read this protest, Mr. Friend signed it, and having delivered it into court said: If, after the protest, you think me obliged to proceed, I am ready.

Sir W. Wynne. We are unanimous in saying, that you ought to proceed now.

Mr. Friend then addressed the court, in substance as follows:

Reserving

Reserving to myself, gentlemen, the right of making, if necessary, my exceptions to this mode of proceeding, I shall, without further delay, state the grievances under which I have laboured. I have called, and do call the prosecution malicious. A proof of malice, and that the prosecution never originated in a pure love of justice, or a simple regard to propriety, is, that a knowledge of the means of punishment appears always to have fallen far short of the desire to inflict it. When the former has been nearly extinguished, the latter has blazed with unabated flame. At the first meeting of my prosecutors, it was determined, after some debate, that I should be prosecuted in the vice-chancellor's court, for having publicly and notoriously offended against a grace passed by the senate of this university, in the year 1603, in preference to a prosecution for having violated the statute de concionibus, and without any mention of other laws; but at a subsequent meeting it was agreed, that I should be prosecuted for having publicly and notoriously offended against the laws of the university, without specifying any in particular. Now, amidst this uncertainty and fluctuation of council, if my prosecutors had been actuated only by a regard for justice, or, indeed, if they had not been entire strangers to that virtue, would not some one of them have said; If there is so much difficulty in finding out any law against which Mr. Friend has offended, how can he be said, to have violated any publicly and notoriously? Or how can we plead a sense of duty or conscience in endeavouring to bring him to punishment?

Another proof of malice is, that many of the charges brought against me, have been founded, not on any undoubted passages in the book, but have been supported by passages misquoted, and mutilated, not only by the insertion or omission of particular words, but by leaving out whole propositions.

I am

I am said to have defamed the liturgy, by asserting, that it is far from the standard of purity in doctrine only; but in the original it is said, in its arrangement, language, or doctrine. If the promoter, and the cabal, had not been actuated by the fiend of malice, they could not have suppressed the other particulars, nor have represented me as charging that imperfection upon a single point, which they must know the authour had expressly charged upon the accumulated defects of all the three. As well might I be said to defame the most beautiful woman in England, by a comparison of her beauty with the Venus de Medicis. Suppose me to have said that, considering attitude, figure, and grace, she was inferior to this celebrated statue; is that saying, in figure only she was so much inferior as to have no pretensions to beauty? These are two out of an infinite variety of circumstances on which I ground my charge of malice in the prosecutors. I wish the promoter may be asked if he has any thing to reply which can repel this accusation.

Sir W. Wynne. You are to go on in producing all which you have to alledge.

Frend. Is the promoter to answer at any other time?

Sir W. Wynne. He is to do as he thinks fit as to his answer.

I come then to the second grievance:

II.

I was cited to appear on the statute de-concionibus, in the vice-chancellor's court. It was because I was then, and I am still, firmly persuaded that the vice-chancellor's court had no business whatsoever with any of the offences described in that statute, that I entered my protest, which

is now in possession of the court. It is not necessary to repeat it here, as it has already been read. This, gentlemen, I feel to be a very particular and extraordinary grievance, that I was cited to answer for the violation of a law, which was not cognizable in the court before which I was summoned to appear.

III.

I have charged the promoter and the cabal with malice: I have now to impute to the vice-chancellor himself a bad design, in endeavouring to effect my punishment by two different and distinct laws. He could not be ignorant, that no person had ever been punished in the vice-chancellor's court on the statute de concionibus; so that, had not I been aware of the non-existence of the grace of 1603, he might, and doubtless meant to have proceeded to punish me upon it. There was another artifice in the vice-chancellor, which cannot be imputed to any but a base design. This consists in availing himself of the authority of a vice-chancellor's court, to compell evidence upon oath: which could not be done by the vice-chancellor and heads of colleges assembled under the authority of the statute de concionibus. All evidence there, he well knew, must be voluntary. The impropriety and injustice of having been subjected to appear for the same offence on two distinct laws, cognizable before two separate jurisdictions, must be obvious to you, and to every person in the least acquainted with the laws of this land. Suppose, for instance, a justice of the peace, after hearing evidence at the quarter sessions, should, upon the strength of that evidence, take upon himself to punish, when he got home, the accused person by his own authority, would such a proceeding be esteemed legal? Could a punishment be inflicted by a single
magistrate,

magistrate, which required the concurrence of the bench, or vice versa? Must not an accused person be tried in the proper court, and be convicted according to evidence in that, not according to any thing which may have been produced in another court? I will be bold to say, that no englishman, no academick, can submit to such an unexampled abuse of every mode of trial. To the complaints, therefore, of malice in the prosecutors, I must add a bad design in the judge himself.

IV.

But supposing that as an academick, I had offended against the statute de concionibus, my offence was cognizable only before the proper judges appointed in that statute, the vice-chancellor and heads of colleges. It was unjust, it was indecent, for a number of masters of arts to form a cabal against a member of their own body. Such combinations are every where highly improper, but here they cannot be too severely reprobated. What then shall be said, when this cabal has the audacity to concert its plots, and to form its resolutions at the vice-chancellor's lodge! Yes, gentlemen, incredible as it may seem, my prosecutors were suffered, nay, encouraged, to meet in the house of the judge himself. There the first resolutions were agreed upon—there the committee was appointed—there the chairman chosen—and, in short, there was every measure taken, and every trap laid, by which an obnoxious member was to be persecuted and ensnared. What englishman would submit patiently to insult and oppression like this: or what judge would suffer his roof to be polluted by such arts as these? Would you, Sir, [to Sir W. Wynne] in the court in which you preside, permit the prosecutors, in any cause, to assemble in your house, and there concert the means and measures of the trial? No, Sir, you would not, nor any judge in Eng-

land; nor any man even here, except such a man as actually suffered it. This, gentlemen, I do then complain of as a most serious grievance, of a singular and alarming nature, that the prosecutors and the judge, in my case, made one and the same party.

V.

Perhaps after the recital of such grievances, it may be thought superfluous in me to produce more: but as was the commencement of this business, so was its progress, and such was its end: it was begotten in malice, fostered in treachery, and accomplished in oppression. Gentlemen, you have heard read, what are called the proceedings of the court upon my trial: they are not the proceedings of the court, but a very different thing: indeed, so totally different, that unless my friend Mr. Lambert, and myself, had assisted in supplying deficiencies, in rectifying the order, and disentangling this chaos, it would have been impossible for you to have proceeded. Had they been put into your hands in such a state, without comment or observation from us, I defy any man to have understood the purport of them, or to have formed a just judgment upon the issue. It is with truth I assure you, that with all the assistance of notes, taken during the whole of the trial, and every advantage of personal recollection, Mr. Lambert, and myself, were more than six hours laboriously employed in arranging and reducing them to an intelligible order.

This defective and disorderly statement of matters, which are supposed to have been exactly recorded, and the omission of a number of particulars, which I conceive to be essential to my vindication, I must consider as another grievance. I am precluded from all remedy here, unless I were allowed to call witnesses, to attest every
omission

omission which I have remarked : but the calling of evidence now would be of no avail ; since your decision is to be guided only by papers before the court. Yet these papers contain no account of my protest against the admissibility of certain witnesses, none of my observations on the irregularity in the proceedings ; on the impropriety of examining witnesses in presence of each other ; of reminding them not only of what each other had previously deposed himself, but what others had sworn before ; of dictating to the witnesses the answer they were expected to give ; and of admitting the evidence of persons interested in the prosecution,—nay, of persons who were themselves principals in the prosecution.

VI.

The sixth grievance is of such a nature as requires barely to be mentioned in a court of justice. After I had appeared to the citation for four days together, and the examination of evidence was all finished, and taken down in writing by the registry, this very writing was taken out of court, and put into the hands of the promoter, the prosecutor, the very man from whose wicked and malicious designs I had most to fear, and for the very purpose of carrying those designs most effectually into execution. This I have maintained, and I do still maintain to be an act which in any court of justice ought to invalidate the whole ; and that, in fact, from the moment when the registry's minutes went into the possession of Dr. Kipling my judges had no grounds whatever to decide upon.

VII.

The vice-chancellor having been defeated in his design of enforcing the execution of the pretended law of

1603, and not being able to proceed on the statute *de concionibus*, without the concurrence of nine heads, it was necessary that the master of Trinity should complete the number: but the master of Trinity, though present in court the first day, had been absent on all the examination of evidence, nor did he return into the university till after the proceedings of the court had been in the hands of the promoter: he could therefore have nothing on which to ground his opinion, or by which he could justify his concurrence in the sentence.

Here the master of Trinity got up, and asked if he might speak a few words; but Dr. Wynne observing, that it was not necessary, Mr. Frend went on: I do conceive this to be very just cause of complaint, that without any authentick evidence at all, or on such a miserable representation of it, the master of Trinity should bring himself to join in a sentence, which, without his concurrence, could not have been passed.

VIII.

But supposing the master of Trinity to have been present all the trial, and the vice-chancellor to have acted with the due concurrence of the statutable number of assessors, the first thing which the statute orders to be done is, that the offender should be required to recant. This, gentlemen, was never done; no recantation was ever proposed to me: a paper indeed was put into my hands, which the vice-chancellor thought proper to call a recantation, but which, on perusal, I found to be absolutely unintelligible on the one part, and unreasonable on the other. I would have expostulated upon it at the time when it was first given me, but was silenced by the violent noise of, order! order! from the vice-chancellor, and the court was abruptly and indecently adjourned. I brought,

brought, the next court day, a paper containing my objections into the court, but was prevented from reading it, by the menacing language of the vice-chancellor; and with much difficulty I prevailed upon him to take it, and look at it himself: he returned it to me, and would not permit it to remain in court. I will now read it, and put it into your hands for your consideration.

Sir W. Wynne. You may read it as part of your speech.

Here Mr. Frend read the paper.

This paper I attempted in vain to read in the vice-chancellor's court. I will now sign it, and deliver it into this court.

Sir W. Wynne. I do not know whether it is any part of the process.

Frend. I must submit to you, whether you will receive any paper at all from me.

Sir W. Wynne. Certainly not.

IX.

Then my grievances are far greater than I had ever imagined: for if the vice-chancellor's reception of any paper, which I offered to him, is a reason against its being admitted here, by acting as he did, he added to the injustice of his conduct, and aggravated the injury, by precluding me from the possibility of redress.

X.

My next appeal is to the absolution which I produced in bar of sentence, and by which I had been regularly acquitted by the vice-chancellor at the end of the term,

of all statutable offences previously committed by me, and had been formally restored to God and the holy sacraments *. These, gentlemen, are solemn words: and if the vice-chancellor thought proper to treat it with contempt; I still maintain, that either I stood absolved by it from any charge which had been brought against me for violation of the statutes, or the university is three times in a year guilty of the most flagrant impiety in the sight of God and man.

Whatever degree of superstition may be charged upon our ancestors, there was wisdom in such a provision as this; they did right to discourage and to check all those iniquitous cabals, by which studious men might be molested, and the progress of literature and science be suspended by the interruption of suits and litigations. It is very natural that this observation should be treated with ridicule by the promoter, the subpromoters and the familiars: but let them remember that they derive their ranks, their degrees, and their offices in this place, from the very same authority to which I now appeal; and let not them deride a salutary law, tho' it may have originated in the impure sources of ignorance and superstition. How much soever we may now despise the pretended power of any person to absolve, it is ordered expressly by the statutes that the vice-chancellor should pronounce absolution at the end of every term; and whatever exceptions may in these times be taken as to the form, whatever have been the notions on which it was founded, the regulation, I repeat it, was wisely calculated for this place. Should any literary man subject himself here to prosecution, the established authority says, let him be fairly tried, let him not be kept in suspense to the detriment of his own pursuits and the injury of literary enquiry. It was foreseen that a number of ignorant or malicious men, people of no occupation and

* See page 177.

of no principle, might cabal together against an individual, whose activity and industry might render him obnoxious to them. The university says, We will countenance no such proceedings: we will put a stop to litigation and suspense: no man shall be harassed by tedious prosecutions: no man shall be interrupted in his studies for more than one term: at the end of every term the vice-chancellor shall absolve. It was on these considerations that I felt myself entitled to the protection which the university intended to hold out to men of letters and application; when I found myself, after a number of fruitless remonstrances, compelled to resort to it, it was under the full persuasion that I was vindicating the honour of our institutions; and, when I saw my appeal treated with contempt and ridicule, I felt that, in my person, were insulted the rights and privileges of the senate.

XI.

Another grievance is, that the sentence does not relate to any offence positively prohibited in the law under which I am tried: for the statute de concionibus says nothing about either printing or publishing a book. It describes only sermons, common places, theses, and such other publick discussions, as fall of course under the immediate cognizance and observation of the vice-chancellor and heads, who are supposed to attend upon them.

I have indeed heard it said, that the words aliter publice imply all modes of making publick whatsoever, and that the publication of books must be included in it. But no person at all acquainted with the interpretation of penal laws can maintain such a position: a general clause annexed to a particular enumeration of offences cannot, by any legal or fair construction, relate to any other kind

of offence than such as had been before specified. Now the very title of this statute de concionibus, marks out at once the nature of the offences to which it was meant to apply, and the publick manner of conducting the several exercises enumerated in it, (which are all supposed to be performed in the presence of the vice-chancellor and heads of houses,) plainly shews, that 'aliter publice' must mean only some other such kind of publication as had been before recited.

In what I have advanced on the construction of a penal law, I am justified by the express authority of a person very learned and most respectable in the civil law. (Here Mr. Frend quoted the opinion of Dr. Harris, upon the statutes of Jesus college, and applied the opinion which he gave on that case to the proceedings of the university.)

I am ready to acknowledge, that had I maintained any offensive doctrines in a sermon, common place, or thesis, or in any other such publick manner, whether in speaking publickly in the schools, in the senate, or in any other place, and on any other occasion, where the duty of the vice-chancellor and heads require them to be present, I should indeed have been liable to their censure under this statute. So far from this, I am punished by the vice-chancellor under this statute for my temerity in writing a book: but be the contents of that book what they may, the authour is not liable to be punished for them under that statute: he may print a book in London—he may do it privately—however he does it, he does not necessarily for that fact come under the cognifance of the constituted authority. It exceeds the authority of the vice-chancellor and heads, to punish any man for his temerity in writing a book.

XII.

But the publishing of a book makes only part of the offence. The promoter indeed did employ much time and great labour in attempting the proof of this; he should have recollected, that the proof of any criminal assertion in that book was equally necessary to establish the offence as the proof of the publication itself: but this was never done. Supposing me the authour, there is no proof whatever that I said any thing in that book which subjected me to punishment. The promoter endeavoured, by garbling sentences, and mutilating passages, to make up a kind of charge against me; but it was requisite that particular passages should have been faithfully and literally quoted, and particular errors demonstrated to have been fairly deduced from them. I shall read you part of the opinion of the same learned civilian I have already quoted. (Passage read from p. 16.) This is the declared opinion of a person of great authority in the civil law, whose opinion is frequently taken by men of this university: and I do declare, that it has no where been proved that I have maintained any position contrary to the doctrine or the discipline of the church of England, as by law established. The promoter could not support the charge, and the criminality of the pamphlet still remains unproved.

XIII.

But, after all, supposing that the crime had been fairly proved upon me, and that the vice-chancellor was legally empowered to proceed upon the statute de concionibus, still no sentence could be pronounced, no punishment inflicted till the guilty person had been required to recant. Recantation implies error, and this error must be specified

cified before it can be acknowledged, or given up. No such thing has taken place in the course of these proceedings: I was required to retract from the error and temerity of publishing a book. Gentlemen, it was insolence in the extreme to put such a paper into my hands, as what they called a recantation. I am very sensible that I am speaking now to gentlemen as well as delegates, and I will not scruple to say that no man of letters could consistently put such a paper into my hands: much less could I be so base a scoundrel as to sign it. The paper specified no errors; nor did my judges in fact desire it. If they had, they should have come forward fairly and said, You have maintained such and such opinions, which we judge criminal, and we therefore require you to retract from them. But this neither the promoter, nor my judges did; and why not? The reason is obvious: because their purpose was not to reform, but to punish; not to reclaim, but to get rid of me. The promoter and his cabal had agreed, that punishment should be inflicted without my being offered the opportunity of retracting.

Let me see, then, what are the errors which they pretended to article against me; and what ought to have been the recantation proposed by my judges:

1. I am first accused of having defamed the liturgy of the church of England. It is almost sufficient to reply, that this has nothing to do with the statute de concionibus: yet, suppose it had, what ought to have been the language of the court? You have defamed the liturgy; you have maintained it to be inferior to other rituals; and we require you, in express words, to acknowledge your fault, and to retract from such positions. Why, Gentlemen, was this not done? because I had plainly said in my defence, that I had read many liturgies, and scrupled not to declare, that, taking it altogether, the liturgy of the church of England was the best established liturgy I had ever

ever seen. They well knew that such a recantation I might have signed at once, without the smallest scruple: it was my real opinion, formed, not, as my accusers take up their notions, without reason or examination, but upon much reading, and serious enquiry.

2. I am next charged with having called the church of England idolatrous; if there was any meaning in the article, what ought to have been the form of recantation? simply this: You have asserted that the church of England is idolatrous, we require you to disclaim that assertion, and to acknowledge that it is not. Gentlemen, my accusers could not seriously make such a proposal to me; because they must know, that through the whole of the work the assertion had never been made. I declared in my defence, and I repeat it now, that I never called it idolatrous. The charge is a lie. They were afraid to put my vindication on that ground. The question is not now, whether I am, or am not the authour of the pamphlet: but whether in any part of the pamphlet the church of England is said to be idolatrous: if it were, I again insist that I ought to have been required to retract from the assertion, and warned of the statutable punishment, if I would not. Gentlemen, the whole of this accusation arose from the ignorance of these wretched men, unable to compare the different forms of worship which prevail in different churches in Christendom; they imagined that, what was strictly true of the greater part of them, must be meant of all. Does then the church of England associate with the worship of the supreme God, the worship of created beings †? Who ever said, or supposed this? I never did. Had the writer of 'Peace and Union,' or any other person said so, that is nothing in this case; I do not think it, and indeed it was never advanced by me. Is it not then very extraordinary, that of two errors imputed to me, I do not in fact maintain either?

† See note p. 126.

3. The third error articulated against me is, that all ecclesiastical courts, ranks, and titles, are repugnant to the spirit of christianity: this also is an infamous lie: I never said this, nor ever thought it. I leave the cabal, and the judges, to reflect that I pronounce the imputation to be an infamous falsehood: there is no such sentence in the pamphlet from which they pretend to have extracted it. The word 'are' is put in, and the word 'hence' left out; and such insertions and omissions of words, such perversions and distortions of meaning, arise from the most abominable wickedness: it is infamous treachery. Gentlemen, you must pardon me, if I am warm upon this occasion; it is not myself, but the university and its members that I am protecting against the intrigues of judges, managers, and caballers. I said plainly in my reply to this charge, that ecclesiastical courts, ranks, and titles, are not all repugnant to the spirit of christianity. I produced from scripture express examples; whose authority I willingly acknowledged, and whose expedience I readily saw. But suppose that I had said all which I have been misrepresented as saying, here again the mode of proceeding, such as the statute required, was plain and obvious. The vice-chancellor should have said: You have maintained all ecclesiastical courts, ranks, and titles, to be unchristian: it is an error—will you retract from it? if not, you must be banished. Why was this not put to me? I answer: because my enemies knew that I should at once have answered, such an assertion is indeed an error: it cannot be maintained: I do most willingly disclaim it.

Can any thing more be wanting to strengthen the proofs of their malice? Is this just judgement? Is this the conduct of an equitable and upright judge? No, Sir, it is wickedness—wickedness of no common kind, nor such as ordinary men are subject to: it is not ignorance, but passion—deliberate, abominable passion—the result of malice

lice and hatred, the project of vicious minds, warp'd by the desire of gaining infamous preferment. Who can hear of such proceedings, without pronouncing them abominable, shameful, scandalous !

I have been punished for a breach of statute of which I am not guilty : if I had been guilty, and had not retract-ed, then indeed in the proper place I might have been subjected to the sentence decreed.

4. The last error charged against me is, that I have profaned the most holy offices of the church. But here again the law on which I was tried is totally silent: the statute *de concionibus* says not a syllable on this head. If therefore I had been guilty of either profaning or ridiculing the offices of the church, it must be upon some other law that I ought to have been tried, and to some other punishment that I ought to have been subjected. But the fact is, I denied the whole. The offices of the church of England are no where reviled in the pamphlet called *Peace and Union*; nor did the promoter, when challenged by me to support his accusation, produce a single instance in which I had offended. But suppose that I had been proved guilty of this article: what ought to have been the conduct of wise judges, and benevolent men? Had they been actuated by the love of justice, they would have produced a form of recantation in this particular, and I must either have subscribed to it, or submitted to the consequence. In short, the recantation proposed to me, ought, in common equity, and plain sense, to have been founded on the several particulars articulated and proved against me. But the judge and the cabal had formed a very different project: without any regard either to the forms or the essence of justice, their sole view was to punish. This was the ground of their first resolution; not a voice at the meeting was found dissenting, though I could at this moment produce evidence, that

that one at least of the original twenty-seven had never seen ; and I have reason to believe, that numbers of the rest had never read the book.

These are a few of the gravamina under which I have struggled, against an iniquitous and malicious prosecution. The last alone is sufficient to set aside the sentence ; it comes home to the point, that my judges in fact never proposed the alternative which the statute requires, and without which no sentence could be enforced.

The vice-chancellor is mistaken in supposing me obstinately attached to my opinions : since I shall never refuse to retract any error of which I am fairly convicted. But the reasons must be given by my opposers : I must be induced by argument, not by compulsion : and I again affirm, that no opinion of mine has been attempted to be refuted, nor any position stated which I had an opportunity of retracting.

XIV.

As the publishing or writing of a book does not come amongst the offences specified in the statute de concionibus, so no instances have ever occurred of any person being punished under that law, for writing a book, but only for maintaining viva voce, in a publick university-exercise some point or doctrine specifically reprobated in the statute. But had not the silence of the law been sufficient, the practice of the university is decisive against my being brought to answer for any thing advanced in a printed book. Is not this then a singular and most oppressive grievance, that I should be the only person selected out by malice and ignorance to become the victim of intrigue, and to suffer by an obsolete law on which no person before had been ever prosecuted, and all this too
in.

an age which has been called by some persons an enlightened age? This however is an error with which I cannot be charged. I have not called it an enlightened age, nor shall I easily be induced to call it so, while such a cabal and such judges can be found to exist in it. Men, who could put into my hands such an infamous and pitiful paper as no person of letters could write, nor any man of common honesty subscribe. Yet these persons are the guardians and instructors of our youth, and expected to support by their examples, the interests of literature and the dignity of religion. Thanks to God! We have had so few as the twenty-seven capable of such conduct. The university has not lost its character for liberality and learning. I have received marks of friendship innumerable from men of the most distinguished character amongst us, such as are sufficient to redeem us in the opinion of the publick. In behalf of men like these I have always vindicated the masters of arts: they are not all favourers of these wicked and abominable proceedings, they are not all involved in the charge, they are not all bigots, persecuters, and inquisitors. There are numbers of men amongst us very different from the promoter and his cabal. I am proud to acknowledge the particular countenance, which has been shewn me by clergymen of the church of England, and by gentlemen highly respected in the law, who have expressly and repeatedly declared their abhorrence of these practices: they all consider it as a great grievance to me to be the only person ever brought to answer for an action which neither the law forbids, nor has the court authority to punish. Upon the whole, what I have hitherto said relating to the fact, may be reduced to one very short statement; there was no evidence before the court on which my judges could pronounce me guilty of even publishing the book; there was no proof of any thing criminal contained in it; nor, if there were, was that crime cognizable in the court which tried it.

XV.

After six long days however, the vice-chancellor undertakes to declare that he is satisfied of my guilt, and that the heads concur in the sentence; but there is a very material defect in form. It does not appear from this, that the heads were all satisfied of my guilt: they concurred indeed in my sentence; but it does not follow, that they thought I deserved it. In both points their concurrence ought to have been declared; and the want of this declaration affects the whole.

But supposing the form to have been good, let it be considered only for a moment, how extremely disgraceful this mode of checking the freedom of investigation must be, in a place devoted to the purposes of literary improvement, how utterly inconsistent with the very end and design of our institution. If false or dangerous opinions may be any where produced, where can they be uttered with so little effect as in the midst of persons, qualified at once by ability and zeal, by reason and argument, to expose their fallacy, and to repel their danger? Such, Sir, are the modes naturally to be expected from literary men; and such ought to have been the mode adopted by the men who caballed against me. Let the promoter, Sir, or any of his party, write a book, containing sentiments which I feel myself interested to oppose: I here engage, that I will not make a party in the university to rouse the indignation of the vice-chancellor and the heads against him; I will answer it by argument and reason; and if my objections are replied to, will vindicate their strength, or acknowledge my mistake.

Having

Having stated these grievances to you, gentlemen, I request that you would take them into your serious consideration, and on account of each separately, and all conjointly, I desire that the sentence of the vice-chancellor may be reversed, as totally unfounded in law. As a master of arts of this university, I can only be punished by the statutes of the university: as an englishman, I am subject to no punishment but by the direction of the laws of the land.

Amenable as I know myself to be to these laws, and submissive as I should have been to legal jurisdiction, legally exercised, I never will submit to any punishment in this country, not authorized either by the statutes under which I am tried, or by the laws of the land. It is on this ground that the liberty of Englishmen stands, that the proceedings against a man accused must be open, and that his trial must be by law. Even in those cases, where juries are not admitted, still he must be tried by law; and there is not a maxim in life which I would more particularly enforce than this; that law, law must be the ground and guide of all our civil conduct. And here I cannot forbear congratulating that part of my audience, who, by their situations, are exempted from any responsibility to jurisdictions like that under which I have been tried. Let them think themselves happy that they can be tried only by the known laws of their country, by courts legally established, and the verdict of a jury. Yes; I do declare, that for any offence, of whatever kind, I would rather submit my cause to any jury of twelve men, in whatever manner, or from whatever ranks impannelled, than to a set of judges, however qualified by learning or abilities, who can yet think themselves at liberty to act in the unprecedented and unwarrantable manner of the vice-chancellor's court. Much as I value the distinction of a master of arts of this university, I feel myself infinitely

more happy as an englishman, that I cannot be punished but by law. I cannot be imprisoned: I cannot be banished from my native country, but by a jury: and if I am to be punished after a verdict found by a jury, still that sentence must be according to law. In my case, the sentence was not according to law; for no recantation was proposed from the pretended charges, because they knew that I might have signed it without the least hesitation.

I cannot conclude, without again declaring that in these proceedings I have all along considered myself as acting, not merely on my own account, but in behalf of every member of the university: that we may none of us hereafter be exposed to the inconvenience and obloquy, that I have laboured under for many months; be withdrawn from our studies to answer the cavils of malice and impertinence; or be in danger of ruin from a factious cabal, composed, for the greater part, of men intriguing for preferment, or led away by bigotry and fanaticism.

Here Mr. Frend ended: and Sir W. Wynne asked Dr. Kipling, if he had any thing to offer in reply to Mr. Frend.

Dr. Kipling. I have heard nothing that requires any reply. I leave it all to the court.

Mr. Frend here desired that Dr. Kipling would repeat what he had said, as he had heard him very imperfectly.

Dr. Seale to Dr. Kipling. I beg you will repeat what you said just now.

Dr. Kipling. I am willing to submit the whole to the court.

Frend. The promoter, then, has nothing to observe on any of the charges.

Dr,

Dr. Kipling. No, not any thing. I have nothing to say, Friend. I believe so.

The court was then adjourned till after the congregation in the afternoon,

F O U R T H C O U R T .

Before the right honourable and right worshipful William Wynne, &c. between the hours of six and eight in the afternoon of the 29th day of June, &c.

THE judges of this court affirmed the sentence of the court below, as follows: Whereas by grace of the university dated 14th June 1793, William Wynne, knight, Dr. John Hey, Dr. Seale, Edward Christian, master of arts, and John Lane, master of arts, were appointed judges delegates in a certain cause of appeal or complaint between William Friend, master of arts, and fellow of Jesus college, in this university, party appellant, or complaining, on the one part, and Thomas Kipling, doctor in divinity, party appellee and complained of, on the other part, We the said William Wynne, John Hey, John Barlow Seale, Edward Christian, and John Lane, having taken the said cause into our serious consideration, after having examined the several proceedings had therein before the right worshipful Isaac Milner, doctor of divinity, vice-chancellor of this university, which have been transmitted to us; and having heard the arguments urged by the appellant in support of his appeal, Do by this definitive sentence pronounce against the said appeal made and interposed in this behalf; and that the judge from whom the said cause is appealed, hath acted rightly, justly, and lawfully.

lawfully. And we do hereby affirm the sentence pronounced by him in the said cause.

(Signed)

William Wynne.
John Hey,
John Barlow Seale.
John Lane.
Edward Christian.

The business of the congregation in the senate house being ended, and the court assembled in the law schools, Sir William Wynne rose, and spoke to the following purpose:

I am directed by the rest of the delegates to give sentence in this case as our unanimous opinion. It was a case originally instituted in the vice-chancellor's court, in which Mr. Frend was summoned by citation to appear before the vice-chancellor and assessors, for violating the laws of the university, particularly the statute de concionibus. (Here the words of the citation were quoted.)

To this citation Mr. Frend appeared before the vice-chancellor and eight heads of colleges, and the commissary. Mr. Frend excepted to their jurisdiction as a court, and delivered in a protest. (Here the words of the protest were recited.)

This protest was taken into consideration by the vice-chancellor and his assessors; and the vice-chancellor pronounced for the jurisdiction of the court: and we are of opinion that the vice-chancellor was right. The protest goes upon the assumption, that the two courts are distinct jurisdictions: for which we find no authority either
in

in the statutes, or the practice of the university*. For the new regulations by queen Elizabeth, require no new court: the statute which directs that the vice-chancellor should not proceed in certain cases without the concurrence of the heads, is only a regulation of the court; it makes no alteration in the court itself. The addition of a certain number of persons authorized to sit with the vice-chancellor in certain cases, is no alteration of the court, except only in that particular expressly mentioned by the law. Something similar to this may be observed of other courts of law established in this country. The court of King's Bench has varied at times the number of its judges; but no alteration took place, either in the court itself, or the mode of its proceedings. The court of chancery, if necessary, calls in others as assessors: yet no alteration is thus made either in this court or its proceedings. In the court of admiralty, in cases of damages, assessors are called in, and pilots sit with judges and delegates. These, however, make no alteration in the nature of the court, but are added merely as advisers. So in the present case, although the heads joined with the vice-chancellor in giving sentence, they make no part of the court: nor do we see any ground for the distinction pretended between the authority of the vice-chancellor's court, and that of the vice-chancellor and heads of colleges. Mr. Frend has objected that the concurrence of the heads was necessary in the whole of the proceedings as well as in giving sentence. The statute *de concionibus* requires no such thing: the words of the statute are not *cancellarii et præfactorum jussu*, but *cancellarii jussu cum assensu majoris partis præfactorum*: these words are materially different, and the vice-chancellor has clearly by this statute a right to proceed without the concurrence or assent of the other

* The proof is, that these two courts are formed on a very different plan; the one is secret, the other open: in the one, an oath can be legally administered; in the other, it may be refused.

heads till he comes to the sentence itself. To this indeed their assent is required: but to nothing more. In whatever manner or however they may be qualified, they are authorized to give it, whether the evidence was delivered in their presence, or they were informed by the vice-chancellor, no one can dispute the sentence. This being the case, I conceive that no objection can lie against the master of Trinity's absence on some days of the trial. So long as he assented to the sentence, it was not necessary for him to be present at the whole of the proceedings: however desirous he might be to get the best information, it was not essential to the giving his assent that he should have personally attended at the trial. Mr. Frend observed further, that the jurisdiction of the vice-chancellor's court and that of the vice-chancellor and heads must necessarily be different, as there can be no appeal from the vice-chancellor and heads to the senate: now this is odd as he has himself appealed from them as vice-chancellor and heads, to the senate, and we sit here in consequence of that very appeal*. On these grounds his renunciation of their authority was over-ruled by the vice-chancellor: and the delegates think that he acted rightly.

The charges were then read, particular passages recited from the pamphlet, and the grace of 1603, and the statute de concionibus referred to. Dr. Kipling then called witnesses, which was objected to by Mr. Frend till the *secundus dies juridicus*, and he grounded his objection on a part of a grace passed 1609. But in another part of the very same grace the judge expressly allowed a more summary mode of proceeding.

* Mr. Frend did not appeal from the vice-chancellor and heads but from the vice-chancellor's court, proclaimed, adjourned, and dissolved, in the usual forms, after the grace of 1603 had been disposed of.

(Here

(Here Sir W. Wynnè quoted the words ‘*nifi causæ sint leviores et ordinariæ in quibus potest judex statim, &c.*’) But whether the cause be levior or longior seems left entirely to the direction of the judge, and by virtue of that direction, the vice-chancellors have in all cases of late summarily proceeded*: and that the party accused might, however, have no just cause of complaint for want of time, a sufficient interval was allowed †. By the grace, indeed, it appears, that in deciding what are to be considered as leviores causæ, the judge may use a discretionary power, and may proceed summarily upon them: this has been confirmed by long practice; and it does not appear that the proceedings in the vice-chancellor’s court have been carried on by examination of witnesses upon allegations, and interrogatories, and subsequent publication. Witnesses were in consequence examined. Mr. Friend objected to the evidence of Mr. Kilvington and Mr. Lloyd, on the ground of their being accusers, and concerned in the prosecution ‡. And had it appeared that these gentlemen had any interest in the cause, especially in the costs of suit, or any previous dispute or quarrel with the party, or any malice against him, these are circumstances, which, though they would not have rendered them incompetent as witnesses, yet would have made against the credit to be given them. But there appears no reason for suggesting any thing of this kind against them. Their publick resentment of the pamphlet affords no ground for objection; their indignation appears to have been, not against the person, but

* Levior, or longior—insidious contrast, taking the very distinction for granted.

† Mr. Friend did not accept it as an indulgence, but a legal right.

‡ Grounds of objection to Kilvington and Lloyd, were not the same.

his publication: they were therefore strictly allowable as witnesses; and the evidence they gave seems impartial and clear. The same objections were suggested to have been made against other witnesses*, but these not appearing on the minutes of the court, I call them barely suggested no evidence appeared of their having been made, and therefore no weight was allowed them †.

Mr. Frend's next objection was, that the questions and answers which were taken down by the registry, ought to have been kept in the court, but that they were taken out of court, and put into the possession of the promoter. As the fact has not been controverted, we must consider it as admitted. At some period, the proceedings must go into the hands of all the parties: Mr. Frend must have had copies given to him, at what time I do not know ‡. But the objection is taken up on that radical maxim, that no evidence shall be communicated before publication §. If this had been a close examination, then indeed it would have been a fatal proceeding ||. But this was an examination in open court, taken down in the most deliberate manner, by the proper officer, and might also have been taken down by the promoter, or any of his friends. It was therefore indifferent in what manner the promoter

* The same objections were not made to all the others.

† But evidence was offered on oath, and rejected; though the extraordinary oath of the registry was taken.

‡ There was no objection to copies of evidence being sent to all the parties; but to the original being given to the promoter before any copy had at all been taken.

§ It was not on this maxim that the protest was grounded, but on the fact quoted in the case.

|| The case was not concerned with close examination, it was in publick court, before a jury: this is therefore a most gross and wilful perversion.

came

came by it; whether the originals came into his hands; if those originals underwent no alteration there, and that they did not, has been sworn to by the registry. But Mr. Frend objected also to the mode of taking the depositions at various times. It would, to be sure, have been more regular, if the deposition of each witness had been taken all at once: but it is no unusual thing in courts of law, by leave of the court, to have up evidence at different times. I remember one instance, in a particular trial, where a witness having said what he had not meant, the cause was rescinded, to take the deposition of that witness again. Mr. Frend objected next, that several leading questions had been asked, but the instances did not appear to us to be of such a nature as to justify the complaint. One witness was called and reminded what he had said before. (Here Bowtell senior's evidence was referred to 'You told the court, &c.'). I do not apprehend that to be a leading question*. An examination conducted in a court familiarized to legal processes, might perhaps have been carried on in rather a more proper manner in point of regularity; but to this I make one general reply: the inexperience of the parties who conducted the proceedings, and of the court in which they were carried on. It would be a very unhappy thing, if the members of this university were conversant in matters of this nature. If it appears that in this case they have conducted themselves with caution, and used every means in their knowledge, little regard ought to be had to objections of informality and inexperience; and, I must say, I never saw depositions taken with greater impartiality, or witnesses appear with † less forwardness to

* Leading questions confounded with reminding evidence, which are distinct grounds of complaint in the protest.

† Less forwardness. See the evidence of Messieurs Lloyd and Kilvington.

support the charge, than in the present case. But there is yet one objection, the vice-chancellor's rejection of an appeal to absolution in bar of sentence. I think it very evident, that the occasion and the offence considered, the vice-chancellor could do no otherwise than reject such an appeal. There are many of the old statutes, by which excommunication was usually inflicted on many offences not now thought deserving so severe a censure. To avoid hurting tender consciences in those days, absolution was pronounced at the end of every term : but that this provision should be construed to extend to offences stated to be contrary to the statutes, can never be allowed* : the protest, therefore, being grounded only on very ancient usage, was very properly dismissed, and the vice-chancellor acted perfectly right.

Mr. Frend has this day urged as a matter of the greatest consequence, that the whole cause originated in maliciousness † ; and he spoke of the promoter, and of the persons concerned with him, in terms which nothing could excuse but his unhappy situation : but I trust that on reflection he will be sincerely sorry for the expressions he has made use of. It is sufficient for us to say the charge is not relevant at all ; courts do not enquire into motives of a prosecution : it is impossible for them to be ascertained ; and if it could be done, it could not weigh on the guilt, or the innocence of the party accused ; these

* Offences contrary to statute are expressly included in the absolution ; and enormous offences are forgiven, since the culprit is restored Deo et ecclesiæ.

† A charge of malice is material in an appeal on account of grievances ; and what could be a greater one than that the judge and accuser should be guided by the same bad motives. Dr. Wynne does not answer Mr. Frend's proofs of malice. What became of them ?

must

must depend on the real merits of the cause, and the facts actually proved in the course of evidence.

In the first place, then, it appears, from the name of Mr. Frend in the title page, that he was the authour of the pamphlet: this indeed goes but a little way; and though the presumption, which it affords, remains till it be removed, yet, for legal proof, it must be allowed that great confirmation is wanted. In the evidence of Hodson, such circumstances occur as leave little room to doubt; yet even this evidence is slight, compared with what appeared on subsequent enquiry; the evidence of Bowtell, and the correspondence with Mr. Watson. In these notes, Mr. Frend does over and over again speak of this pamphlet and the appendix as his: indeed he seems to have exerted more activity than is usual in a common publication*. The only question now remaining is whether there be any thing in the pamphlet which comes under the statute de concionibus †. The modes of uttering expressly prohibited in this statute are, preaching, common-placing, and publick lectures; but these are not all: the statute evidently goes farther, and includes much more in the expression, 'aut aliter publice.' The only question is, whether the printing and publishing of a pamphlet does come within this clause? Mr. Frend contended, that 'aliter publice' must refer only to some mode of publication, of the same kind with those before particularly described, and cannot apply to any doctrine, or position, not maintained and supported viva voce. But I do not apprehend that this could be allowed, in the strictest way of interpretation; and we must consider the

* This is false: the only pains, Mr. Frend took, were to see that his books were sent to the bookfellers.

† This is not the question, but whether the vice-chancellor's court had sufficient proof of this? The delegates are here on new ground and a fresh trial.

spirit of the statute, and the mischief which it was intended to prevent*. It is certain, that publishing by printing is more strong, more extensive, than by any viva voce declaration; in these circumstances, the pamphlet proved is such as opposes what the statute forbids to be opposed, and is therefore comprehended in it. Of the particular parts and passages in this pamphlet, I shall take notice of only three.

1. In page thirty-nine alone, there is language sufficient to justify the sentence we are about to give †. ‘Hence ecclesiastical courts, ecclesiastical ranks and titles, ecclesiastical dress, all repugnant to the spirit of christianity.’

It has been stated by Mr. Friend, that this passage was not fairly quoted; and he denies that any such meaning, as the promoter has given to it, can be inferred from the original; but we think the meaning is clearly determined from the context: ‘the christian world,’ says the author, in the same page, &c. to ‘concerns.’ Hence—Now, I think, in all plain construction, this clearly implies the sense given to it by the promoter; and if so, how it can be said that they are not against ‘*aliquem statum et gradum*,’ I do not know: at the close of the passage they are all pronounced ‘repugnant to the spirit of christianity; and the writer of such a passage must be proved guilty of the charge.

* Judges should be less fallible than Dr. Wynne and his brethren, to be allowed to decide on the spirit of a law.

† The delegates find three passages: but how do they know, that these were the passages obnoxious to the statute, in the eyes of the vice-chancellor and heads? What right had the delegates to look out for obnoxious passages? They could be concerned only with those which Mr. Friend was ordered to retract; but such passages were not pointed out in the proper court.

2. It goes on, ' A man, if a priest or minister enters, is not master of his own house; he must not thank god for the blessings of providence at his own table; he cannot pledge his faith to a lovely woman without the interference of the priest; his offspring must be sprinkled by sacred hands; and at death he is not committed to his long home without another spiritual incantation.' Now, how words could be pronounced more injurious to the clergy of this kingdom than these, I cannot see. The laity are called brute beasts, for tamely submitting to this usurpation; and therefore I cannot but think that the writer must mean to oppose the degrees and ranks established by the church of England.

3. The latter end of the page speaks of the * sacred offices of marriage, baptism, and burial, as incantations: we are therefore clearly of opinion, that the vice-chancellor was well founded in calling upon the party to recant. It has been alledged by Mr. Frenck, that he was not called upon to recant, in virtue of there being no particular errors or passages specified in the form prescribed; but in fact he was called upon to recant—the form is before the court, and is as follows. (Here the form of recantation was read.)

Now Mr. Frenck's assertion rests on this: that the recantation proposed, did not contain any particular specification; but we are of opinion, that, if any passages whatever are to be found in the pamphlet, which go against the statute, the requiring of him to retract from the book which contains such passages, is strictly proper †.

* Marriage a sacred office! pity that he did not call it a sacrament!

† The enquiry before delegates was not, whether Mr. Frenck's pamphlet was any where faulty, but whether the judges who condemned were right: and they pointed out no passages.

Now,

Now, I have pointed out three passages, in which the pamphlet does expressly controvert the provisions in the statute. The form, therefore, was proper; besides, by that statute, the party is obliged to conform in whatever manner the vice-chancellor shall direct 'eo modo quo illi prescribitur.' The party had no pretence to dictate the manner in which he was to make his recantation, but was obliged by the statute to conform to that mode which the vice-chancellor should prescribe. This mode was legal and proper; and we do therefore agree, that in this, and in every part of the proceedings, the vice-chancellor did right, and we do therefore affirm the sentence.

Mr. Frend now demanded a copy of the sentence; and the court was dissolved: but before the delegates left the schools, he rose, and said: I desire it may be understood, that my present intention is to appeal from this unjust sentence, to the court of king's bench, where I hope every englishman will meet with justice.

A P P E N D I X.

Nº I.

De causis forensibus. Cap. 48.

Stat. rég. Eliz. An. 12mo. ed.

OMNES causæ et lites quæ ad universitatis notionem pertinent tam procancellarii quam commissarii judicio subjiçiantur nisi procuratores vel taxatores academiæ aut eorum aliquis vel magister artium aut qui supra illum fuerit alter litigantium sit: tunc enim procancellarii solius erit jurisdicção nisi in nundinis Sturbrigiensibus et iis quæ ad festum sancti Johannis baptistæ apud Barnwell tenentur. Finem autem accipient infra triduum si fieri potest omni juris solemnitate summotâ. A sententia commissarii ad procancellarium appellabitur infra viginti quatuor horas post latam sententiam. A procancellario autem siue lis coram eo cœpta sit siue per appellationem ad eum devoluta ad universitatem provocatio fiet infra biduum a tempore latæ sententiæ et non post suamque appellationem intimabit appellans alteri procuratorum infra triduum latæ sententiæ. Ille vero statim nomine academiæ judici a quo inhibebit ne quid pendente appellatione attentare vel innovare presumat prius tamen duobus solidis honorarii loco ab appellante acceptis nec non viginti solidis apud eum depositis appellanti restituendis si justam fovisse causam probetur vel in usum academiæ convertendis si temere appellasse convincatur aut si post

datos iudices a prosecutione cessaverit vel culpa sua cognitio differatur. Causæ appellationum ad universitatem ultra decem dies si fieri potest post datos iudices non protrahantur nec secunda provocatio omnino admittatur. Iudices delegati tres ad minimum nec plures quam quinque pro qualitate causæ in omni appellatione dabuntur et sententiæ majoris partis illorum standum erit. Potestas autem nominandi iudices sit penes quinque illos viros qui pro capite illius anni constituti sunt et duos procuratores. Et qui a majori parte istorum nominati fuerint ad regentes et non-regentes deferentur suffragiis suis eligendi si placent eis alioqui mutatis uno vel altero alii eorum loco per dictos septemviros surrogati proponentur eligendi. Et si hi quoque displicent similiter tertio fiet. Quod si nec tertio loco positi eligantur licebit dictis septemviris aut eorum majori parti pro illa vice tantum delegatos iudices eligere et dare. Et si major pars septemvirorum vel in nominandis iudicibus vel in eligendis illis (quando electio ad eos devolvitur) non conveniant tunc plures numero prævalebunt licet majorem partem vel æquam habita ratione totius numeri non efficiant.

Nº II.

Stat. De concionibus. Cap. 45.

NULLUS concionator sit vel aliquam concionem pro gradu suo habeat nisi ad minimum diaconus sit. Octavo maii ad Henrici septimi commendationem sacra concio sit quam regius in theologia professor faciet. Pridie unius cujusque termini concio latina hora nona antemeridiana in ecclesia beatæ Mariæ habeatur. Primo termino anni concionabitur regius professor in theologia: secundo professor dominæ Magaretæ: tertio concionator academiarum. Unoquoque die dominico de anno in annum conciones in academiæ templo fiant. Ordinem eundem collegiorum

orum in concionibus conservabunt quem in disputationibus præscripsimus incipiendo a senioribus qui concionatores sunt in unaquaque combinatione et sic progrediendo ad juniorem. Qui cursum suum concionando omiserit viginti solidis mulctabitur.

Collegia pro singulis concionibus solvent bedellis quatuor denarios nisi quis pro gradu concionatur. Concionatores autem in concione sua utentur caputio usitato non-regentis sub pœna sex solidorum et octo denariorum quoties deliquerint.

The latter part of this statute is inserted in p. 169.

Nº III.

Grace passed on June 9. 1603. specified in the articles.

PLACET vobis ut quicumque doctrinam vel disciplinam ecclesiæ Anglicanæ vel ejus partem aliquam legibus publicis stabilitam scriptis vel dictis vel quocunque modo in academia Cantabrigiensi publice oppugnaverit ab omni gradu suscipiendo excludatur et a suscepto suspendatur ipso facto.

Nº IV,

Grace passed in the year 1609, to regulate judicial proceedings.

CUM statutis academix nostræ cautum sit ut omnes causæ in aliqua curia universitatis motæ omni juris solemnitate semota et sola facti veritate inspecta debite terminentur infra triduum (si commode fieri possit) quæ quidem statuta (inter alia) quilibet advocatus procurator et alii omnes sese ad postulandum gerentes in curiis prædictis virtute juramenti strictè tenentur observare quibus

tamen non obstantibus jam pridem omnes pene lites coram procancellario et commissario universitatis nostræ inceptæ potius in triennium quam triduum prorogantur in manifestam privilegiorum et statutorum nostrorum violationem honoris et jurisdictionis academice scandalum et opprobrium et litigantium vexationem ac dispendium

Placet igitur vobis ut subsequens ordo in omnibus et singulis causis posthac in curiis universitatis motis seu movendis strictè observetur viz.

Imprimis arrestetur reus si possit apprehendi si non possit fiat citatio peremptorie viis et modis. Reo capto seu bonis suis ex primo decreto salva custodia custodiatur donec fidejubeat coram academice registrario vel ejus deputato se compariturum proximo die juridico ex tunc sequenti et sic postea quolibet &c. Reo autem non comparente statim luant fidejussores sine favore. Insuper juxta tenorem statutorum academice nostræ principales personæ factum ipsum per se proponant videlicet actor per se suam actionem et reus suam defensionem nec defensores vel procuratores admittantur pro eisdem nisi adversa veritate vel alia legitima causa per dominum procancellarium approbanda sint detenti quo minus in judicio suam præsentiam poterunt exhibere de quibus in principio coram domino procancellario vel commissario vel delegatis iudicibus fidem faciat juramento; quo præstito et causa utrinque declarata et non antea admittantur. His omnibus sic ut præcipitur factis et observatis primo die juridico detur materia sive fiat facti declaratio: fiat etiam litis contestatio et præstet reus juramentum de fideliter respondendo et moneatur ad subeundum examen infra triduum (nisi causæ sint leviores et ordinariæ in quibus potest iudex statim tam partes principales quam testes si quos præsentem habeat publice interrogare et examinare de veritate facti et omni solennitate profus semota causam statim finaliter determinare) sed utcumque triduo elapso

elapso vel antea (si fieri possit) habeat actor copiam responsi ut videat an opus habeat ulteriori probatione et sciat quid ultra ei faciendum habeat etiam ad probandum in proximum et post triduum exeat compulsorium pro testibus.

Secundo die juridico veniat actor paratus ad probandum et testes suos producat si quos habeat. Testes iudex in levioribus et ordinariis causis potest ut supra publice interrogare de veritate materię sive allegationis et statim causam finaliter determinare. Sin causa longior sit et altiore examinationem requirat habeat reus biduum pro interrogatoriis et intra principium tertii diei et diem proximum juridicum examinentur testes tam super materia originali actoris quam super interrogatoriis per reum datis.

Tertio die juridico publicentur dicta testium et assignentur ad sententiam in proximum et proximo feratur sententia nisi reus velit excipere: si velit detur reo proximus ad excipiendum: quo die adveniente respondeat actor ut supra reus actori et praestet juramentum et subeat examen ut supra et reo detur terminus ad probandum in proximum et fiat ut supra actori.

Quarto die producantur testes rei si quos habeat qui juramento suscepto moneantur examinari citra proximum, reliquaque fiant per iudicem vel in publica testium examinatione vel in concedendis alteri interrogatoriis quae secundo die juridico fiebant de testibus actoris.

Quinto die publicentur dicta testium rei assignetur ad sententiam proximo et ad informandum interim.

Sexto die feratur sententia.

Septimo et ultimo nisi interim ab altera parte appellatum fuerit mandetur sententia executioni.

Placet

Placet etiam vobis ut quilibet advocatus procurator five causarum defensor necnon quilibet officarius curiarum academix nostræ virtute juramenti sui corporalis per eorum quemlibet præstandi præmissa omnia et singula stricte teneantur observare priusquam in ullis causis in posterum in dictis curiis movendis admittantur et ut iste ordo et hæc concessio vestra pro statuto habeatur et in libris procuratorum infra decem dies jam proxime sequentes inscribatur.

Nº V.

Bishop White's interpretation of the words *De majore parte sociorum*, in the statutes of Jesus college.

DE majore parte sociorum quomodo accipienda sit, tam in dicto statuto de electione officiariorum, cap. 12. quam etiam in statuto de electione sociorum et forma ejusdem cap. 5 et denique in statuto de scholaribus in collegio exhibendis cap. 9, de quibus omnibus idem dubium movetur, ita judicamus. Nimirum cum in statutis vestris observemus requiri alias universaliter majorem partem omnium sociorum, ut in quibusdam rebus et negotiis arduis cap. 3, 25, 26, 27, 28. memoratis, alias simpliciter et indefinite majorem partem sociorum, non adjecta voce omnium, ut in electionibus sociorum, scholarium, et officiariorum dictis capitibus 5. 9. et 12. cumque præterea unicuique dictarum electionum suus certus terminus ultra quem differri non debeat in iisdem statutis limitetur, cum denique in dicto statuto, de electione sociorum, expresse et signanter dicatur, magister convocabit omnes socios ejusdem collegii tum in academia præsentem, absentium nulla habita ratione aut mentione facta, eademque esse videatur reliquorum duorum statutorum ratio: his igitur omnibus diligenter collatis et perpensis, tam verba illa dicti capituli quinti, de electione sociorum et forma ejusdem, illi electi censeantur et pro electis reputentur, in quos magister

magister et in ejus absentia præfidens sive locum tenens et major pars sociorum consenserint, quam illa capituli noni, dictos vero scholares per magistrum et majorem partem sociorum toties eligi et admitti volumus, et denique illa capituli duodecimi, illi pro electis officiariis habeantur in quos magister vel in ejus absentia præfidens et major pars sociorum expresse consenserint, ita interpretamur, ut intelligantur, et intelligi debeant, non de majori parte numeri sociorum pro tempore existentium, sed tantum de majori parte sociorum tum in academia præsentium quando electionem fieri debere contigerit.

Proviso semper, quod in omnibus dictis electionibus requiratur præsentia majoris partis totius numeri sociorum pro tempore existentium. Proviso tamen insuper quod si quis sociorum legitime monitus sive vocatus ad capitulum venire noluerit, aut neglexerit, vel cum semel præfens fuerit in capitulo sine venia discesserit, habeatur pro illa vice et quoad res explicandas in illo capitulo tanquam nullus de numero existentium.

The above is the interpretation referred to in pages xxvii. and xxviii.

Nº VI.

Mr. Kilvington's character vindicated by the twenty-seven.

The following paper was drawn up by the twenty-seven, by way of rescuing Mr. Kilvington from the just odium testified against him for his very improper conduct.

Cambridge, June 1st, 1793.

WE, the underwritten, express our detestation of the scandalous and unfounded imputations, which were attempted

tempted to be thrown upon the characters of Mr. Lloyd, and Mr. Kilvington, at the late trial of Mr. Frend.

T. Kipling	R. Boon
J. Jowett	J. Dudley
R. Glynn C.	W. Pugh
W. L. Manfel	C. Simeon
J. Mainwaring	Antho. Mainwaring
R. T. Belward	Ed. Wigley
Geo. Whitmore	W. Millers
W. Walford	Jos. Watfon
J. Oldershaw	Tho. Castley
W. Wade	John King
W. Mathew	Philip Douglas
J. Smith	E. Edwards
J. Wood	J. Bradshaw
W. Wilfon	W. Walker
H. Greene	J. Fawcett
R. Ramsden	R. Tillard
A. Frampton	W. Easton
E. Outram	Henry Jowett

To the above Mr. Farish added his own manifesto, in the following terms :

THE testimony given by Mr. Kilvington, during the trial of Mr. Frend, having been openly contradicted by the latter, and an idea having prevailed that certain letters written by Mr. Kilvington to Mr. Frend, contained a proof that the testimony was untrue ; I think myself called upon to declare publickly, in vindication of Mr. Kilvington's character, that, since the trial in the vice-chancellor's court, Mr. Frend, on application made to him by Mr. Kilvington's desire, shewed me those letters, and that there was nothing in them which appeared to me in the smallest degree to invalidate that testimony. The substance of the letters was an application for college testimonials,

testimonials, and they contained general expressions of gratitude to Mr. Frend for favours received, which, according to Mr. Frend's explanation, consisted in attentions shewn to Mr. Kilvington, when at Jesus college, and the supplying him occasionally with books from the library.

W. FARISH,

Senior Proctor of the University.

Magd. Coll. July 1, 1793.

With respect to the main point, the falsehood of Mr. Kilvington, in attributing any civilities shewn to him to a desire of profelyting him, these manifestos are by no means satisfactory. The impartial reader will turn to the letters, p. 107. and from them form a truer judgement, than from the ipse dixit of any one of the cabal. At the same time he must give the twenty-seven credit for standing by each other to the last, and proving, by their own signatures, that 'they are all, all honourable men.'

The insidious conduct of Mr. Farish, deserves severe reprehension: he called on Mr. Frend as an old acquaintance, and the letters were, at his request, shewn to him, without any suspicion of his being sent by the twenty-seven on such a message. A free conversation then took place between them, in which Mr. Frend observed that the conduct of Mr. Kilvington was as ridiculous, as it was base. He had, on coming to college, brought letters of introduction from a common friend, from which he became intitled to the usual civilities, founded on such occasions. Mr. Frend recollects, particularly, the manner in which this was stated. You know, said he, to Mr. Farish, that as tutors you take notice of men on two accounts. Those, who have abilities and industry, you take notice of for their own sakes, and are happy in shewing them particular attention:

L 1

others,

others, not at all distinguished from the common mass, come frequently with recommendations from common friends, for whose sakes they are entitled to a degree of attention. To the former class, Mr. Kilvington had no pretensions; on the latter account, he had a right to expect the notice shewn to him, which did not however equal the attention paid to several of his fellow students, from whom I have received a very different return, and whom I am happy to see distinguishing themselves in more laudable pursuits.

N^o. VII.

Petition for the removal of subscription to articles and confessions of faith.

To the honourable the commons of Great Britain in parliament assembled.

The humble petition of certain of the clergy of the church of England, and of certain of the two professions of civil law and physick, and others whose names are hereunto subscribed,

Sheweth,

That your petitioners apprehend themselves to have certain rights and privileges which they hold of God only, and which are subject to his authority alone. That of this kind is the free exercise of their own reason and judgement, whereby they have been brought to and confirmed in the belief of the christian religion, as it is contained in the holy scriptures; that they esteem it a great blessing to live under a constitution, which in its original principles ensures to them the full and free profession of their faith, having asserted the authority and sufficiency

sufficiency of holy scriptures in all things necessary to salvation; so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man that it should be believed as an article of faith or be thought requisite or necessary to salvation. That your petitioners do conceive that they have a natural right, and are also warranted by those original principles of the reformation from popery, on which the church of England is constituted, to judge in searching the scriptures, each man for himself, what may or may not be proved thereby. That they find themselves, however, in a great measure precluded the enjoyment of this invaluable privilege by the laws relating to subscription; whereby your petitioners are required to acknowledge certain articles and confessions of faith and doctrine, drawn up by fallible men to be all and every of them agreeable to the said scriptures. Your petitioners therefore pray, that they may be relieved from such an imposition upon their judgement, and be restored to their undoubted rights as protestants of interpreting scripture for themselves, without being bound by any human explications thereof, or required to acknowledge by subscription or declaration the truth of any formulary of religious faith and doctrine whatsoever beside holy scripture itself.

That your petitioners not only are themselves aggrieved by subscription as now required, which they cannot but consider as encroachments on their rights, competent to them both as men and as members of a protestant establishment, but with much grief and concern apprehend it to be a great hindrance to the spreading of Christ's true religion: as it tends to preclude, at least to discourage, further inquiry into the true sense of scripture, to divide communions and cause mutual dislike between fellow protestants: as it gives an handle to unbelievers to reproach and vilify the clergy

by representing them, when they observe their diversity of opinion touching those very articles which were agreed upon for the sake of avoiding the diversities of opinion, as guilty of prevarication, and of accommodating their faith to lucrative views or political considerations: as it affords to papists and others disaffected to our religious establishments occasion to reflect upon it as inconsistently framed, admitting and authorising doubtful and precarious doctrines, at the same time that holy scripture alone is acknowledged to be certain and sufficient for salvation: as it tends, and the evil daily encreases, unhappily to divide the clergy of the establishment themselves, subjecting one part thereof, who assert but their protestant privilege to question every human doctrine and bring it to the test of scripture, to be reviled as well from the pulpit as the press, by another part, who seem to judge the articles they have subscribed to be of equal authority with the holy scripture itself: and lastly, as it occasions scruples and embarrassments of conscience to thoughtful and worthy persons in regard to entrance into the ministry or chearful continuance in the exercise of it.

That the clerical part of your petitioners, upon whom it is peculiarly incumbent, and who are immediately appointed by the state to maintain and defend the truth as it is in Jesus, do find themselves under a great restraint in their endeavours herein, by being obliged to join issue with the adversaries of revelation in supposing the one true sense of scripture to be expressed in the present established system of faith, or else to incur the reproach of having departed from their subscriptions, the suspicion of insincerity, and the repute of being ill-affected to the church; whereby their comfort and usefulness among their respective flocks, as well as their success against the adversaries of our common christianity are greatly obstructed.

That

That such of your petitioners, as have been educated with a view to the several professions of civil law and physick, cannot but think it a great hardship to be obliged, as are all in one of the universities even at their first admission or matriculation, and at age so immature for disquisitions and decisions of such moment, to subscribe their unfeigned assent to a variety of theological propositions, concerning which their private opinions can be of no consequence to the publick, in order to entitle them to academical degrees in those faculties; more especially as the course of their studies, and attention to their practice respectively afford them neither the means nor the leisure to examine whether and how far such propositions do agree with the word of God.

That certain of your petitioners have reason to lament not only their own but the too probable misfortune of their sons, who, at an age before the habit of reflection can be formed, or their judgement matured, must, if the present mode of subscription remains, be irrecoverably bound down in points of the highest consequence to the tenets of ages less informed than their own.

That, whereas the first of the three articles, enjoined by the thirty-sixth canon of the church of England to be subscribed, contains a recognition of his majesty's supremacy in all causes ecclesiastical and civil, your petitioners humbly presume that every security proposed by subscription to the said article is fully and effectually provided for by the oaths of allegiance and supremacy, prescribed to be taken by every deacon and priest at their ordination, and by every graduate in both universities. Your petitioners, nevertheless, are ready and willing to give any farther testimony, which may be thought expedient, of their affection for his majesty's person and government, of their attachment and dutiful submission in church and state, of their abhorrence of the unchristian

ian spirit of popery, of all those maxims of the church of Rome which tend to enslave the consciences or to undermine the civil or religious liberty of a free protestant people.

Your petitioners in consideration of the premises do now humbly supplicate this honourable house, in hope of being relieved from an obligation so incongruous with the right of private judgement, so pregnant with danger to true religion, and so productive of distress to many pious and conscientious men and useful subjects of the state; and in that hope look up for redress and humbly submit their cause under God to the wisdom and justice of a british parliament and the piety of a protestant king.

And your petitioners shall ever pray, &c.

This petition, signed by about 250 persons, was presented to the house of commons on Thursday the 6th of February, 1772, by Sir William Meredith, and, after nine hours debate, was rejected on a division by 219 against 73.

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JUST PUBLISHED,

PRICE ONE SHILLING,

PEACE AND UNION

RECOMMENDED TO

THE ASSOCIATED BODIES

OF

REPUBLICANS

AND

ANTI-REPUBLICANS.

BY *WILLIAM FREND, M.A.*

FELLOW OF JESUS COLLEGE, CAMBRIDGE.

THE SECOND EDITION.



